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ABSTRACT

The kind and extent of public access and control in broadcast commercial television is currently in a state of extreme flux. The history of public groups that exert pressure on television stations' management for changes in programing and policies ranges from small complaints to fully organized license challenges in the courts. However, most of the conflicts between broadcasters and public interest forces are settled privately--out of court. The effect of such private negotiation is not always in the interests of the whole public. Placation of one grievance rather than basic improvement is sometimes the result. Solution to this situation likely lies with the Federal Communications Commission. (CH)

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THE PRIVATE AGREEMENT AND CITIZEN PARTICIPATION IN BROADCAST REGULATION

A Thesis

Presented in Partial Fulfillment of the Requirements
for the Degree Master of Arts

By

Carlton Ford Fry, B.S.

The Ohio State University
1972

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CHAPTER I

INTRODUCTION

The ultimate test of a democratic society must lie in its ability to effectively respond to the needs and desires of its citizenry. The means by which the collective will is determined and implemented is through an elected government dedicated to protecting and serving the best interests of the people. This has been the guiding principle for American society.

But as the nation approaches its two-hundredth anniversary its citizens seem to be growing more and more disenchanted with the job their government is doing for them. The public is beginning to question whether polluted air and water, congested highways and decaying cities represent the results of a government truly dedicated to maximizing the quality of life for its constituency.

Individuals, citizens organizations and others have begun to rally under the banner of "consumerism" to articulate their complaints about what they view as an unsatisfactory lifestyle. This consumer movement represents a desperate effort to make the most efficient and productive use of our dwindling natural resources. This movement comes from the grassroots of society, and as one author has defined it, consumerism means:

> . . . there must be an improvement in the quality of American life. Its objective is to make society more

> responsive to the needs and wants of people generally, but particularly those who lack ready access to political or financial power. In doing so it hopes through direct citizen action and by means of the adroit use of publicity and of legal administrative procedures to circumvent the technological and managerial infrastructure.[1]

Action has been taken along many fronts in this effort to make society and government more responsive. One example is a new Massachusetts law which enables dissatisfied citizens to undertake private enforcement of environmental laws which may have been "overlooked" by government agencies charged with safeguarding the environment.[2]

Citizen protests have also resulted in the establishment of municipal departments to protect the consumer interests in many of the nation's largest cities. The first such office was set up in New York City in 1969 to supplement governmental authority in this area.[3]

There has been citizen agitation for changes in corporate law to " . . . facilitate corporate responsibility to consumer and conservationist demands."[4] Initial industry response has been in some instances to propose "binding standards" to eliminate pollution and safety problems.[5]

Broadcasting too, is beginning to feel the pressure of the consumer movement. But this has not always been true. For example, in 1968 Federal Communications Commissioners Kenneth Cox and Nicholas Johnson conducted a study of broadcast stations in Oklahoma to assess their efforts to provide the type of public service programming that would make meaningful contributions in helping to alleviate the kind of societal problems which concern many citizens.[6]

The Commissioners prefaced their study with the comment that the basis of American commercial broadcasting is " . . . local service, local news, enlightened presentation of local controversial issues, local talent and a community dialogue."[7] Such an idea, then, expresses the philosophy behind the American broadcasting system as one of attempting to provide the type of meaningful service for which many consumer oriented citizens are agitating.

However, after conducting their 3-month evaluation of the programming sample of American radio and television service, the Commissioners concluded that the public service foundation referred to above is a very shaky one. They observed that the programming product of the local stations examined was mostly television entertainment from national network sources, that there was little, if any, relevant information about community problems provided by the stations, and that most citizens possessed no knowledge of the type of service local stations are expected to provide. Indeed, the Commissioners expressed the average citizens' attitude about the quality of broadcast service being made available by writing:

> Most people believe that radio and television are like the weather. Bad weather exists. But it is no one's fault. Accordingly, nothing can be done about it.[8]

That analogy may have been accurate in 1968, but it is certainly less true in 1972. As will be emphasized in this thesis, the consumer's traditionally passive attitude toward broadcasting has changed greatly since the Commissioners' observations were recorded four years ago. The consumer movement has begun to recognize that, as the Communications Act

originally stated, the airwaves used by broadcasters are one of our most important natural resources. Citizens have become aware that broadcasting offers those living within this society an opportunity to communicate with one another, to "circumvent the technological and managerial infrastructure,"[9] and to break through barriers of misunderstanding and ignorance which contribute to many of our problems.

So as an important natural resource, broadcasting has become a target of scrutiny by many concerned citizens. They have questioned whether its full potential for public good has been realized. And certainly, such an endeavor directed at a resource which Congress dedicated to serve the public " . . . interest convenience, and necessity,"[10] could not be questioned.

But such has not been the case. Although its policy statements might be interpreted otherwise, the Federal Communications Commission for the most part has not welcomed or encouraged citizen participation in the regulation of broadcasting. And it has taken lengthy court battles to obtain recognition by the Commission that citizen action regarding broadcast policy formulation and implementation might be proper.

However, some progress has been made in making broadcasting more responsive to public needs. One of the most notable achievements was the regulatory action regarding broadcast advertising of cigarettes which was initiated by a young public service-minded lawyer from New York.[11] And more recently there has been an attempt to extend the Fairness Doctrine to automobile and gasoline advertisements. Here it is contended that the ads present only one side of a controversial issue of public importance--the effect these products have on the quality of the environment.[12]

But consumerism is also responsible for yet another and perhaps more significant development in the broadcast field. Here an attempt is made to not only influence government regulation, but actually participate in it as well. Such citizen participation is brought about through contracts entered into by broadcast licensees with private citizens groups representing the listening and viewing public.

At license renewal time citizens groups have threatened to file, or have actually filed, a petition to deny the station's application for renewal with the FCC. The effect of this action has been in many cases either to force the Commission to call a hearing concerning the station's suitability for renewal, or the citizens have entered into a private agreement with the station and then withdrawn their petition to deny. In most instances the agreement contains certain provisions requiring the station to modify or initiate new policy in a way the citizen group feels will most appropriately benefit the community being served.

It is this development of citizen participation in broadcast regulation which will be examined in this thesis.

In the next chapter, a discussion of the role of government in regulating broadcasting will be presented. An attempt will be made to define the FCC's goals for the type of programming service to be provided the public. And an assessment will be made concerning the Commission's success in achieving these goals.

Chapter III will trace the beginnings of citizen participation in broadcast regulation, the FCC's reaction to this participation, and the evolution of the private agreement.

A survey of the scope of citizen group activity in broadcasting will be made in Chapter IV. And an examination will be made of the major organizations which have been instrumental in the growth of citizen group activity.

Chapter V will offer some observations on the private agreement as an alternative approach to dealing with particular problems in broadcast regulation, and whether such an approach is in the public interest. In addition, an examination will be made of the FCC's efforts to safeguard against abuses in the private negotiating procedure.

Chapter VI is a brief assessment of the impact of the private agreement on the American system of broadcasting.

Much of the resource material used in this thesis came from the Law Library of The Ohio State University, which is the official depository for materials of the Office of Communication of the United Church of Christ. Those materials were extremely helpful in conducting this study.

FOOTNOTES

[1]Richard W. Jencks, "Broadcast Regulation by Private Contract: Some Observations on 'Community Control' of Broadcasting," Address before Broadcasting Symposium, Wash., D.C., Jan. 18, 1971, p. 1.

[2]Gregor McGregor, "Private Enforcement of Environmental Law: An Analysis of the Massachusetts Citizen Suit Statutue," Environmental Affairs, Vol. 1, Nov., 1971, p. 606.

[3]Philip Schrag, "On Her Majesty's Secret Service: Protecting the Consumer in New York City," The Yale Law Journal, Vol. 80, July, 1971, p. 1529.

[4]Michael Heyman, "Changes in Corporate Laws to Facilitate Corporate Responsibility to Consumer and Conservationist Demands," The Business Lawyer, Vol. 27, Nov., 1971, p. 223.

[5]Ibid.

[6]Broadcasting in America and the FCC's License Renewal Process: An Oklahoma Case Study," 14 F.C.C. 2d p. 1.

[7]Ibid.

[8]Ibid, p. 7.

[9]Jencks, p. 1.

[10]1934 Communications Act, Sec. 302 (a).

[11]See Banzhaff v. FCC, 405 F. 2d 1082 (D.C. Cir. 1968).

[12]See Friends of the Earth v. FCC, 22 RR 2d 2145, and Henry L. Bass, "Using the FCC's Fairness Doctrine to Effect Environmental Reform," Environmental Affairs, Vol. 1, June, 1971, p. 367.

CHAPTER II

DEFINING AND PROTECTING THE PUBLIC INTEREST

The Regulatory Environment

Before proceeding directly to an examination of the increased citizen's role in broadcast regulation, it is necessary to discuss the overall regulatory environment that has shaped broadcasting during the past several decades. A brief review will be made of the basic standards which have been established by the FCC and the courts to ensure that the public interest is protected in broadcasting.

The Federal Communications Commission is the governmental agency charged with regulating broadcasting. The Commission is one of the more than fifty independent regulatory agencies created by a Congressional delegation of power.[1] It was brought into being with the passage of the Communications Act of 1934, and it is from this law that the regulatory body derives its authority.[2]

The guiding principle for the FCC's regulatory function states that a broadcaster must serve the " . . . public interest, convenience and necessity."[3] In order to carry out this principle the communications act requires that a broadcaster obtain a license from the Commission before going on the air. The rationale behind this requirement is that the airwaves are regarded as public property. And since the number of broadcast frequencies in the spectrum is limited, only a select few are permitted to operate broadcast stations. Those who are granted

licenses must be carefully selected and made to understand their obligations as trustees of the public interest.

The licensing procedure is provided for in the Communications Act itself:

> The Commission, if public interest, convenience and necessity will be served thereby, . . . shall grant any application therefor a station license . . . .[4]

> No license granted for the operation of a broadcasting station shall be for a longer term than three years . . . and any license granted may be revoked . . . . Upon expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term not to exceed three years . . . if the Commission finds that public interest, convenience and necessity would be served thereby.[5]

The Commission, then, is charged with regulating broadcasting by granting an operating license to a broadcaster who will serve in the public interest. The broadcaster is granted temporary authority to use part of a valuable public resource. His license expires at the end of three years, and at that time the broadcaster must file with the Federal Communications Commission for renewal of his license. Again, the license is to be renewed only if in the public interest.

Defining the Public Interest

It is apparent that the Commission's most crucial task lies in defining the "public interest." The agency received broad guidelines in the 1934 Communications Act, but further clarification of the term is needed if a broadcaster is to know how he can properly fulfill his statutory obligations.

There have been at least two additional sources which have helped to give substance to the words public interest. The courts, have from time to time, issued decisions clarifying the meaning of the term, and the Commission has issued several policy statements of its own.

Among the most important court decisions are two from the United States Supreme Court. In FCC v. Sanders Brothers, it was stated that public interest, inconvenience and necessity requires a license applicant to have the ability to render the best practicable service to the community reached by his broadcasts.[6] And in the famous "Network Case," National Broadcasting Company v. United States, the high court said the public interest to be served is the interest of the listening public in the " . . . larger and more effective use of radio."[7] The court also affirmed the Federal Communications Commission's contention that if it was to protect the public interest, it must be allowed some authority over a broadcaster's programming. However, this authority could not exceed First Amendment censorship restrictions, foremost of which is prior restraint.[8] This limitation is also provided for in Section 326 of the Communications Act.[9]

In 1946 the Commission issued its famous "Blue Book," which for the first time, offered broad programming guidelines that a broadcaster might follow to serve the public interest.[10] Officially titled "Public Service Responsibility of Broadcast Licensees," the document had as its goal overall program balance. Five general requirements were outlined in the Blue Book:

> 1. To secure for the stations or networks a means by which in the overall structure of its program service, it can achieve a balanced interpretation of public needs.

> 2. To provide programs which by their very nature may not be sponsored with propriety.
>
> 3. To provide programs for significant minority tastes and audiences.
>
> 4. To provide programs devoted to the needs and purposes of non-profit organizations.
>
> 5. To provide a field for experiment in new types of programs, secure from the restrictions that obtain with reference to programs in which the advertisers interest in selling goods predominates.[11]

The Blue Book called for programming to include education, public issues, local origination, limitation on excessive advertising, religion and entertainment. The Commission intended to make these goals applicable to both new license applicants and renewal proceedings.

The most recent comprehensive Federal Communications Commission document regarding a broadcaster's public interest obligation is the 1960 Programming Statement.[12] Again the Commission listed important duties of the broadcast licensee:

> The major elements usually necessary to meet the public interest, needs, and desires of the community have included: (1) Opportunity for Local Self-Expression; (2) The Development and Use of Local Talent; (3) Programs for Children; (4) Religious Programs; (5) Educational Programs; (6) Public Affairs Programs; (7) Editorialization by Licensees; (8) Political Broadcasts; (9) Agricultural Programs; (10) News Programs; (11) Weather and Market Reports; (12) Sports Programs; (13) Service to Minority Groups; (14) Entertainment Programming.[13]

The Commission said it would structure its license application and renewal forms to require an applicant to state " (1) the measures he has taken and the effort he has made to determine the tastes and desires of its community or service area, and (2) the manner in which he proposes

to meet those needs and desires."[14] According to the Federal Communications Commission, a broadcaster's principle obligation in fulfilling the public interest requirement lay in his " . . . effort to discover and fulfill his communities tastes, needs and desires."[15]

In 1968 the Federal Communications Commission issued another statement, the Ascertainment of Community Needs by Broadcast Applicants,[16] which was intended to further clarify the requirements of the 1960 policy statement. The document again dealt with the responsiveness of broadcasters to the needs and desires of their communities. And in Minshall Broadcasting[17] the Commission cited four specific elements it is looking for in this regard. According to the Federal Communications Commission, a broadcaster must (1) be able to provide full information on the steps he has taken to determine community needs and desires, including consultation with representative ranges of groups and leaders of the community, (2) suggestions the broadcaster has received, (3) his evaluation of these suggestions, (4) and how the broadcaster plans to meet those needs as they have been evaluated by him.

Another example of the Commission's attempt to more accurately define public interest is the Fairness Doctrine. The Fairness Doctrine is provided for in Section 315 of the Communications Act. In a 1964 Primer[18] the Federal Communications Commission stated that the Fairness Doctrine deals with the broad questions of " . . . affording reasonable opportunity for the presentation of contrasting viewpoints on controversial issues of public importance."[19] The licensee is called upon here to make a reasonable judgment as to whether a controversial issue of public importance has been aired by his station. If so, he is obligated,

in the public interest, to provide for the free expresssion of opposing views.

With regard to the above examples, then, the standard of public interest has been given definition by the Congress via the 1934 Communications Act, the courts in several significant opinions, and the Commission in major policy statements and rulemakings.

It must also be emphasized that there are three critical stages in broadcast regulation at which the Commission is required to make decisions regarding the control of broadcasting and the protection of public interest, convenience and necessity.[20] These are the applications of standards in the approval of (1) license applications, (2) license renewals, and (3) license transfers.

In terms of broadcasting's current structure and practice the license renewal process must be considered the most important of the three stages. The renewal process is more important than the applications procedure simply because most profitable frequencies are already being used. And renewal surpasses the significance of transfer procedures because of the relatively lenient transfer policies currently practiced by the Federal Communications Commission.[21] Stations may be considered " . . . totally vulnerable to standards applied on renewal."[22] If they do not meet the applicable public interest standards they could very well lose their license.

Protecting the Public - The FCC's Record

In light of the rather detailed standards the Commission is responsible for enforcing, it might be expected that many broadcasters

would not measure up to the high levels of service required, and thus fail to have their license renewed during the critical process which leaves them so "vulnerable" to Commission standards. However, this is not the case. The Commission's focus on renewal hearings has historically been favorable to the established licensee.[23] Consequently, there have been very few denials of renewal.

Every three years each of the nearly 7,400 television and radio licensees must apply for renewal. And from 1934, the year the Communications Act was adopted, until 1969, the Federal Communications Commission has considered an estimated 50,000 renewal applications. Of that number only 43 renewals have been denied. In addition, 32 licenses were revoked prior to their expiration.[24]

An analysis of the reasons given by the Commission for revocation or denial of renewal is revealing in terms of the actual risk faced by the licensee. In a recent study it was determined that only seven license revocations were directly related to poor programming practices.[25] The remainder of the reasons cited by the Federal Communications Commission involved technicalities such as unauthorized transfer of control, misrepresentation to the Commission or lack of financial qualifications.[26] Thus, as will be discussed later, it can be shown that if the licensee is careful to obey the technical requirements he actually has little to fear in terms of fulfilling the programming standards the Federal Communications Commission has set forth.

There are a number of reasons why so few license renewals have been denied. Among them is the fact that the Federal Communications

Commission lacks the adequate resources and staff to properly review licensees. As one author has suggested:

> . . . it is unrealistic to expect the FCC, badly understaffed and underfunded, to police stations adequately. The processing, analysis and investigation of roughly 2,400 renewal applications each year is the responsibility of the renewal branch of the broadcast bureau, staffed by only seven lawyers, five broadcast analysts, three engineers, two accountants and a clerical staff.[27]

Under these circumstances, the Federal Communications Commission simply cannot make the effort necessary to thoroughly examine each licensee's performance at renewal time.

Another reason for the lack of renewal denials is because the test for renewal has become whether the existing licensee has operated against the public interest, and not who could do the best job. In Hearst Radio, Inc., (WBAL), a licensee with a mediocre programing record and control of one TV, three AM and two FM stations, plus the Hearst Newspaper chain, was renewed in preference to an unaffiliated "highly qualified" newcomer with superiority on major comparative criteria.[28] The Commission said the determining factor in the case rested in the clear advantage of " . . . continuing the established . . . service when compared to the risks attendant on the execution of the proposed programing of [the new applicant] excellent though that proposal may be."[29]

The attitude of the Commission regarding established licensees was made clear. It would grant the present licensee renewal, rather than "risk" the promises of a potential licensee, though they be superior. Such practice has the effect of comparing only the licensee's past programing and future proposals.[30] For the most part, all the

established broadcaster need worry about is that his operations do nothing to grossly offend the Commission and that his indescretions remain unnoticed at renewal time by the overworked Federal Communications Commission staff. His is not the job of proving at three year intervals his suitability for renewal. Rather, the licensee has only to be very careful, making sure to fill out all the Commission's renewal forms properly.

Despite the rather explicit public service guidelines developed by the Commission, it apparently is very reluctant to punish a licensee, even when public service obligations are either ignored, or at the very least, only grudgingly obeyed. For example, the Commission approved a proposal in 1967 of an FM radio station in Talsey, Virginia, in which the owner planned to devote up to 33 minutes per hour to commercials.[31] And in the Oklahoma Case Study in 1968, a survey of renewal applications of the 10 commercial television stations in the state showed that only one of the stations devoted as much as two hours per week to local public affairs. And there was not a single public affairs program offered in prime time by any of the stations.[32]

It can also be seen that traditionally the Federal Communications Commission has considered local service to be an important criterion in American broadcasting. The principle ingredient by which performance is to be measured is the " . . . diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area."[33]

The importance of the concept of local broadcast service was emphasized by Commissioner's Cox and Johnson in their 1968 Oklahoma study:

> We believe that local service is a value of high import, and that the local station is an appropriate mode for its realization. The notion of a broadcast station serving as a focus for communication among the elements of a community and for confrontation with its problems is not out of date. Today, America's greatest needs are its local needs. Virtually every city in this country has found itself engulfed by incipient rebellion. What these cities discovered, in effect, was that a substantial minority of these residents had lived in the city, but had never been part of the community. They discovered that there had been quite literally, no communication between blacks and whites . . . .
>
> * * * * * * *
>
> The future of this country hinges on the ability of the individual cities to create communications where it has never existed before. Only local media can service that need. And, indeed, in large part only local broadcast media can serve that need.[34]

However, as has been previously discussed, the Commission has been largely unwilling to enforce its own standards for local service. Therefore, it may be too much to expect that the individual licensees would be willing to expend the effort necessary to determine what his area's needs are, and how he might alleviate them.

This assumption is substantiated by two surveys that were conducted in 1970 on the attempts local broadcasters make to ascertain their community's needs and translate those needs into programing service.

The first study was based on a systematic random sample of 100 TV stations and 200 radio stations.[35] The researchers attempted to evaluate practices of stations in ascertaining community needs and the uses made of the data which the stations obtained. The survey concluded that: (1) only a small proportion (30 %) of the licensees made any attempt to communicate with the general public regarding community needs, (2) most survey techniques which were used depended upon unsound methodology,

(3) none of the stations employed objective means to determine community leaders, and (4) only 18 per cent of the sample made a direct relationship between the needs identified and programing planned.[36]

In the second study a survey of the attempts of 424 small-market radio stations to determine community needs was made.[37] The researcher concluded that only 36 per cent of his sample employed any research techniques at all in measuring community needs. And many of the questionnaires used by the stations were limited to advertiser-related information or measurements of station popularity, rather than to real community need.[38]

The material presented in this chapter shows that the FCC has been charged with protecting the public interest in broadcasting. The concept of public interest has been given definition by the Communications Act, the Federal Communications Commission, and the courts. However, the Commission with some exceptions has been either unable or unwilling to enforce the standards. And in addition, the system of American broadcasting based on local service has been shown to be largely ineffectual, both in terms of actual programing practices, and broadcaster attempts to serve local needs.

The next chapter will trace the first attempts of private citizens groups to narrow the gap between the Commission's own programing requirements and the performance of broadcast licensees. Attention will be focused on the techniques used to fill the void created by governmental inactivity.

FOOTNOTES

[1]Louis M. Kohlmeier, The Regulators (Harper Row: New York: 1969) p. 16.

[2]47 U.S.C., 151 et. seq. (1964).

[3]47 U.S.C. 307 (a) (1964).

[4]Ibid.

[5]47 U.S.C. 307 (d) (1964).

[6]309 U.S. 470, 475 (1940).

[7]319 U.S. 190 (1943).

[8]Ibid.

[9]47 U.S.C. 326 (1964).

[10]Federal Communications Commission, Public Service Responsibilities of Broadcast Licensees, (1946), in Frank J. Kahn, Ed., Documents of American Broadcasting (Appleton-Centry Crofts: New York, 1968), p. 125.

[11]Ibid., p. 147.

[12]Report & Statement of Policy Re: Commission En Banc Programing Inquiry, 20 RR 2d 190 (1960).

[13]Ibid., p. 1913.

[14]Ibid., p. 1915.

[15]Ibid.

[16]Ascertainment of Community Needs by Broadcast Applicants, 13 RR 2d 1903 (1968).

[17]Minshall Broadcasting Co., 11 F.C.C. 2d 796 (1968).

[18]Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 29 Fed. Reg., 10416 (1964).

[19]Ibid.

[20]Bruce Stuart Fenton, "The FCC and the License Renewal Process," Suffolk University Law Review, Vol. 5 (Winter, 1971), p. 389.

[21]Ibid.

[22]Ibid.

[23]"FCC's License Renewal Policies," St. Louis University Law Journal, Vol. 15 (1970), p. 98.

[24]Hearings on S. 2004 Before the Subcommittee on Communications of the Senate Committee on Commerce, 91st Congress, 1st Session, p. 30 (1969).

[25]John D. Abel, Charles Clift III, and Fredric A. Weiss, "Station License Revocations and Denials of Renewal 1934-1969," Journal of Broadcasting, Vol. 14 (Fall, 1970) p. 411-421.

[26]Ibid., p. 421.

[27]"Broadcasters and the Public Interest: A Proposal to Replace the Unfaithful Servant," Loyola University Law Review, Vol. 4 (February, 1971), p. 80.

[28]Fenton, Suffolk University Law Review.

[29]Hearst Radio, Inc., 15 F.C.C. 2d 1183 (1968).

[30]The FCC has since proposed other renewal criteria in this regard, but the latest proposal was invalidated by the courts in 1971, see Citizens Communications Center v. FCC, 22 RR 2d 2001.

[31]"The Tuned-Out Turned-Off FCC," Consumer Reports, Oct. 1968, p. 534.

[32]Broadcasting in America and the FCC's License Renewal Process: An Oklahoma Cast Study, 14 F.C.C. 2d 1, 9 (1968), p. 2.

[33]En Banc Programing Inquiry, 20 RR 2d 1901 (1960).

[34]Broadcasting in America, 14 F.C.C. 2d (1968), p. 10.

[35]Thomas F. Baldwin and Stuart H. Surlin, "A Study of Broadcast Station Application Exhibits on Ascertainment of Community Needs," Journal of Broadcasting, Vol. 14 (Spring, 1970) p. 157.

[36]Ibid., p. 166-167.

[37]John Couric, "Small Market Radio Community Involvement," Journal of Broadcasting, Vol. 14 (Spring, 1970) p. 171.

[38]Ibid., p. 181-182.

CHAPTER III

THE PUBLIC STEPS IN AND IS GIVEN PARTICIPATORY RIGHTS

WLBT - The Lengthy Court Battle

Because of the reluctancy on the part of the Federal Communications Commission to enforce its own public service policy guidelines, and the failure of many broadcasters to ascertain and serve local needs, some citizens have begun to take an active role in the regulation of broadcasting. This attempt to influence stations serving local communities has had a profound impact on the Federal Communications Commission and the broadcasting industry.[1] The landmark case in which citizens first asserted their rights as listeners and viewers was Office of Communications of United Church of Christ v. FCC (1966).[2]

The case involved an effort on the part of citizens in Jackson, Mississippi to have the Federal Communications Commission deny the license renewal application of WLBT, one of two television outlets serving that area. When the station's application renewal came before the Commission in 1964, the citizens filed a petition asking that the renewal not be granted because they felt WLBT had not fulfilled its obligation to serve the interests of the Black Community. The citizens had been monitoring the station's programming prior to that time.[3]

The coverage area of WLBT includes a population of approximately 900,000 persons, of which 45 per cent are black.[4] The citizens were aided in filing the petition to deny renewal by the Office of

Communications of the United Church of Christ.[5] The church, one of the nation's largest protestant denominations, had created this special office to protect the public interest in broadcasting. The petitioners sought not to have WLBT's license for themselves, but merely to deny the station's owners, Lamar Life Broadcasting Co., continued use of the channel. In doing so, they charged that the station had consistently supported and promoted segregation, while at the same time, refusing to explore or even discuss opposing views as required by the Fairness Doctrine.[6]

The allegations stemmed from complaints made by the Citizens as far back as 1955. At that time it was claimed that WLBT had deliberately cut off a network program about race relations on which the General Counsel of the NAACP was appearing and had flashed on the viewer's screens a "Sorry, Cable Trouble" sign. Complaints that the station had repeatedly presented only the segregationist viewpoint on the racial issue were made in 1957, and again in 1958, 1962, 1963, and 1964. In 1963 the "Cable Trouble" sign was again used to eliminate coverage of a lunch counter sit-in demonstration in Jackson shown by the National Broadcasting Company.[7]

In their petition, the citizens requested that the Commission hold a public hearing to examine the charges made against WLBT. The citizens also asked that they be allowed to appear as participants to present their allegations. However, in its reply to the petition, the FCC said that since they were not actually seeking possession of the WLBT license and were asserting " . . . no greater interest or claim of injury than members of the general public . . . " the citizens did not

have legal "standing" to be considered as participants in the renewal proceedings.[8] Merely being viewers in the WLBT area did not give the petitioners grounds for appearing before the Federal Communications Commission. The Commission said it alone was charged with representing the public interest in the matter and had given full consideration to the allegations brought against WLBT. Based on the charges in the petition, the FCC concluded that the station had indeed failed to live up to the requirements imposed by the Fairness Doctrine and other programing standards. The Commission also decided that the station had been guilty of discriminatory programing. However, it failed to order a hearing on the matter,[9] and displaying its leniency toward the established licensee, granted WLBT a one-year probationary license renewal, stating that the station must reform its discriminatory practices.[10]

But the intervenors were not satisfied with this ruling and decided to appeal the case to the Court of Appeals for the District of Columbia. They contended that the Commission could not properly renew the license, even for one year, without a hearing to resolve the factual issues raised by their petition.[11]

On March 25, 1966, the Court of Appeals of the District of Columbia reversed the Commission's ruling.[12] The Court ordered the Federal Communications Commission to hold a hearing, and said further that the petitioners should be according standing to participate in it. Judge Burger (now the Chief Justice of the Supreme Court), writing the opinion then as Chief Judge of the Circuit Court, reasoned that the Commission's failure to allow the citizens to represent themselves was a major error:

> The Commission's rigid adherence to a requirement of direct economic injury in the commercial sense . . . denies standing to spokesmen for the listeners who are most directly concerned with and directly affected by the performance of the licensee. Since the concept of standing is a practical and functional one designed to insure that only those with a genuine and legitimate interest can participate in a proceeding, we can see no reason to exclude those with such an obvious and acute concern as the listening audience. This much seems to be essential to insure that the holders of broadcasting licenses be responsive to the needs of the audience, without which the broadcasters could not exist.[13]

Judge Burger also dismissed the Commission's contention that it alone could adequately represent the public interest:

> The theory that the Commission can always effectively represent the listener interest in a renewal proceeding without the aid and participation of legitimate listeners representatives fulfilling the role of the private attorneys general is one of those assumptions we try to work with. When it becomes clear, as it does to us now, that it is no longer a valid assumption which stands up under the realities of actual experience, neither we, nor the Commission can continue to rely on it.[14]

The judge emphasized the legitimacy of an active audience role:

> We cannot believe that the Congressional mandate of public participation which the Commission says it seeks to fulfill was meant to be limited to writing letters to the Commission, to inspection of records, to the Commission's grace in considering listener claims, or to mere non-participating appearance at hearings.[15]

Judge Burger held that the grant of a renewal of WLBT's license for one year was erroneous. The Commission was directed to conduct hearings on WLBT's renewal application, allowing for intervention by the petitioners. The hearings were conducted by an FCC hearing examiner in Jackson, Mississippi, during May of 1967.[16]

Despite the Federal Communications Commission's earlier admission that, on the basis of the petitioner's allegations, the public

interest would not be served by renewing WLBT's license, the examiner found in favor of the established licensee and recommended a full three-year renewal.[17] He did so because of two methods of procedure followed in the hearing.

Instead of requiring that the licensee prove its suitability for renewal, the petitioners were given the burden of proving that the station had failed to serve the public interest. This meant that the station's operators had only to deny the charges and were not in any way obligated to provide evidence of their good conduct.

Additionally, the examiner chose to consider programing changes made by WLBT after 1964, when the station knew it was under scrutiny by the Commission, and had taken steps to correct its programing.

In a 5-2 vote the Commissioners agreed with the examiner's decision and awarded WLBT a full three-year license renewal.[18] However, Commissioners Cox and Johnson set forth lengthy dissenting opinions. They argued that the burden of proof regarding the licensee abuses should have been placed on the station:

> The Commission placed on the petitioners the full burden of proof . . . . One would think this rather backward, that it should be the broadcaster seeking renewal who must demonstrate his service of 'public interest,' not the public which must prove the presumption false. Since the braodcast station, not the listener, is necessarily in control of virtually all relevant information about its past programing practices, such as logs, tapes and scripts, the broadcaster is safe from any challenge. For all he has to do is sit back and deny allegations, not having any obligation to reach into his records for evidence to refute a plausible charge by a member of his viewing public.[19]

The petitioners once more appealed the Federal Communications Commission judgment to the Court of Appeals. Judge Warren Burger again

delivered the opinion of the court and again reversed the Federal Communications Commission.[20] Judge Burger said that the hearing examiner was wrong in placing the burden of proff on the complaining intervenors. He said the petitioners should have been treated much as complaining witnesses, and as such given a far more objective hearing than they received. The judge noted a " . . . curious neutrality-in-favor of the licensee . . . " on the part of the hearing examiner.[21] In a license renewal case, he declared, the petitioners having the burden of proof resulted in the hearing examiner rejecting vital evidence as mere allegations.[22] The judge emphasizedthe fact that a three-year license was granted even though " . . . the Commission had not been able to conclude that the licensee met the burden of showing that renewal of its license for three years was in the public interest.[23]

Accordingly, the Circuit Court ordered that the license renewal grant be vacated for lack of supporting evidence, and that the Commission accept new applications for the WLBT facilities.

The Federal Communications Commission's handling of the entire WLBT proceeding seems to underscore the fact that in many cases the established licensee has a very great advantage over any challenger. The Commission has issued guidelines telling a broadcaster what his responsibilites are. But even when confronted with evidence of improper conduct the Federal Communications Commission is reluctant to provide punishment for the offender.

The WLBT case also served as a good illustration of the FCC's pre-United Church of Christ attitude toward citizen concern over the

quality of local broadcast services. The most important principle to emerge from the case is the fact that citizens groups and other legitimate representatives of the public were granted standing. They gained the right to take an active role and influence in the regulation of broadcasting by appearing in hearings before the Federal Communications Commission. Although the Federal Communications Commission had not previously agreed with the concept of citizen standing, Judge Burger affirmed it in his 1966 United Church of Christ opinion:

> Public participation is especially important in a renewal proceeding since the public will have been exposed for at least three years to the licensee's performance, as cannot be the case when the Commission considers an initial grant, unless the applicant has a prior record as a licensee. In a renewal proceeding, furthermore, public spokesmen . . . may be the only objectors.
>
> * * * * * *
>
> Taking advantage of this 'active public interest' in the . . . qualify of broadcasting rather than depending on government initiative is . . . desirable in that it tends to cast governmental power, at least in the first instance, in the more detached role of arbiter rather than accuser.[24]

KTAL - The First Private Agreement

The significance of having achieved the right of standing did not go unnoticed by citizens in other communities whose broadcast outlets have provided less than ideal service. The right to appear before the Commission and challenge an existing licensee has been the basis for the unique private agreements which have been negotiated between citizens groups and broadcasters since the WLBT case.[25]

The first such private agreement was signed between representatives of local black and religious groups, and television station KTAL

in Texarkana, Texas, on June 8, 1969.[26] Here, as in the WLBT proceeding, the Office of Communications of the United Church of Christ, aided local citizens in Texarkana in getting their complaints before the Federal Communications Commission.[27]

The Chief of the Broadcast Bureau at the Federal Communications Commission had routinely renewed KTAL's license for another three years in 1968. However, in January, 1969, the Texarkana Junior Chamber of Commerce filed a complaint with the Commission regarding the licensee's alleged failure to serve the needs and interests of the Texarkana area. The complaint stated that KTAL practiced a pattern of operation resulting in inadequate news coverage, discriminatory advertising, inadequate local programing, and deficient local studio facilities. And although licensed to serve Texarkana, KTAL actually conducted its main operations in Shreveport, Louisiana, some distance from Texarkana.[28] Upon receiving the complaint the Commission rescinded the renewal of the station's license and began an evaluation of the charges made against it.

Before a decision was reached on this matter, however, an additional twelve Texarkana citizen organizations filed a formal petition to deny the renewal of KTAL's license on the grounds of the licensee's failure to serve the needs and interests of the Black population of Texarkana. The petition to deny was accompanied by another petition containing approximately 7,000 names and charging that the licensee " . . . disoriented itself from the affairs, desires and needs of the people of Texarkana."[30]

The Commission decided that none of the responses filed by the

licensee had the effect of substantially controverting the charges made against it. Accordingly, KTAL's renewal application was designated for a hearing to determine if the grant of a new license would be in the public interest.[31]

However, representatives of KTAL recognized that because of the United Church of Christ precedent, they would be faced with responding to members of the station's listening audience who were now guaranteed rights as a party to the pending hearing. They also knew that the station would bear the burden of proving false the charges contained in the petition. And an additional consideration was the fact that the Federal Communications Commission would not have ordered the hearing unless the allegations against KTAL had some merit.[32]

Consequently, rather than risk a hearing at which the station may have lost its license, KTAL representatives decided to negotiate privately with the citizens to try and settle the dispute informally. After several months an arrangement satisfactory to both sides was concluded.[33] The private agreement had the effect of redressing the racial grievances and guaranteeing future citizen participation in station programming. Among other things it provided for:

1. Greater employment of minority groups by the station.
2. Regularly scheduled programs on which both black and white participants will discuss controversial issues.
3. No pre-emption of network programs which are of particular interest to any substantial segment of the listening audience without advance consultation.
4. Monthly meetings between the station and representatives of all listeners groups in the area.[34]

The arrangement was concluded in two parts, (1) the Agreement, and (2) a Statement of Policy. Both parts were filed with the Commission as an amendment to the renewal application. The parties agreed that any substantial variance from the agreement would be viewed as a failure to operate as originally promised in the license application. The citizen groups then notified the Federal Communications Commission that they wished to withdraw their petition to deny.[35]

In an unprecedented move the Commission agreed to accept the private agreement as part of the official renewal application. It then granted KTAL's renewal request for a full three-year term. In doing so, however, it cautioned the station that:

> Your performance during this period will be carefully examined at the end of the license term to determine whether you have made an affirmative and diligent effort to serve the needs and interests of the city to which KTAL-TV is licensed.[36]

Commissioner Johnson issued a concurring opinion in which he noted the importance of citizen involvement in renewal proceedings. He also took note of the fact that the Commission, by its action in this case, had realized this also:

> A renewal proceeding, is in my judgment, a matter between the broadcaster-licensee and all the people in the community, a matter to be resolved by the FCC according to the statutory standard of 'public interest.' The Commission can utilize the services of volunteer local groups. Indeed, it is so woefully understaffed that any thorough review of broadcaster performance simply must depend upon an arousand involved citizenry.[37]

Clearly, the KTAL agreement set an important precedent for the Federal Communications Commission, broadcasters and citizens.

In the United Church of Christ case the court revised existing Federal Communications Commission procedure and affirmed a more active citizen role in broadcasting. And in the KTAL case the private agreement was first used to further refine the concept of citizen participation.

Since 1969, this type of citizen activism has increased greatly. The next chapter will examine the scope of this activity and the major organizations which have aided it.

FOOTNOTES

[1]"Responsible Representatives of Listening Public Have Standing as Persons Aggrieved," Wayne Law Review, Vol. 13 (Winter, 1967), p. 377.

[2]Office of Communications of the United Church of Christ v. Federal Communications Commission, 7 RR 2d 2003 (1966).

[3]Norman Lobenz, "Everett Parker's Broadcasting Crusade," Columbia Journalism Review, Vol. 8 (Fall, 1969), p. 30.

[4]Office of Communications of the United Church of Christ v. Federal Communications Commission, 7 RR 2d 2004.

[5]Lobenz, Columbia Journalism Review, p. 32.

[6]Lamar Life Broadcasting Co., 38 F.C.C. 1143, 1154 (1965).

[7]Office of Communications of the United Church of Christ v. Federal Communications Commission, 7RR 2d 2003.

[8]"Standing of TV Viewers to Control FCC Orders: The Private Action Goes Public," Columbia Law Review, Vol. 66 (Dec., 1966), p. 1511.

[9]Office of Communications of the United Church of Christ v. Federal Communications Commission, 7 RR 2d 2005.

[10]Ibid.

[11]Lobenz, Columbia Journalism Review, p. 31.

[12]"Church of Christ Standing and the Evidentiary Hearing," Georgetown Law Review, Vol. 55 (Dec. 1966), p. 264.

[13]Office of Communications of the United Church of Christ v. Federal Communications Commission, 7 RR 2d 2008.

[14]Ibid, p. 2010.

[15]Ibid, p. 2011.

[16]KCMC Inc. 15 F.C.C. 2d 432 (1968).

[17]Ibid.

[18]Ibid.

[19]Ibid., p. 447.

[20]Office of Communication of United Church of Christ v. Federal Communications Commission, 16 RR 2d 2095 (1969).

[21]Ibid, p. 2096.

[22]Ibid.

[23]Ibid., p. 2097.

[24]Office of Communications of United Church of Christ v. Federal Communications Commission, 7 RR 2d 2010-11 (1966).

[25]"The Texarkana Agreement As A Model Strategy for Citizen Participation in FCC License Renewals," Harvard Journal on Legislation, Vol. 7 (May, 1970), p. 627.

[26]New York Times, June 11, 1969, p. 95.

[27]Ibid.

[28]KCMC Inc., 19 F.C.C. 2d 112 (1969).

[29]U.S. Bureau of the Census, 1 Statistical Abstract of the United States, Table 21 at 22 (90th ed. 1969).

[30]KCMC Inc., 19 F.C.C. 2d 113 (1969).

[31]Ibid.

[32]"Texarkana Agreement," Harvard Journal on Legislation, p. 635.

[33]KCMC Inc., 19 F.C.C. 2d 112 (1969).

[34]Office of Communications of United Church of Christ v. Federal Communications Commission, 16 RR 2d 1079-1080 (1969).

[35]Ibid., p. 1068.

[36] KCMC Inc., 19 F.C.C. 2d 110 (1969).

[37] Ibid., p. 111-112.

CHAPTER IV

THE SCOPE OF ACTIVITY

> A new day has come. The courts have paved the way for the exercise of public rights. In a few places citizen groups and station managers are showing that injustices may be corrected to mutual satisfaction through simple negotiation. We are beginning a time when the community and the broadcasters will sit down at a table to thresh out issues between them. In the foreseeable future, we may expect that it will become a matter of routine for community groups to negotiate programming and employment improvements with licensees before every scheduled renewal. Television and radio audiences--the most silent of all silent majorities--have found their voices.[1]

The words contained in the above quotation are those of the Reverend Everett C. Parker, Director of the Office of Communications of the United Church of Christ. They were written one year after the first private agreement had been negotiated between the citizen group in Texarkana, Texas, and the licensee of television station KTAL. Dr. Parker's prediction that it would become a " . . . matter of routine . . . "[2] for such agreements to be negotiated was an accurate one.

Just one year after the KTAL settlement the Office of Communication of the United Church of Christ reported that it was either directly assisting or advising citizen groups engaged in negotiations with broadcast licensees in 30 separate communities throughout the nation.[3] And by September of 1971, the Church's attorney, Earl K. Moore, reported that the number of groups seeking help from the Office of Communication had grown to over 100.[4]

These figures are important, but not comprehensive, however, because the Office of Communication is not the only organization engaged in assisting local citizen groups that are attempting to influence the kind of broadcast service their communities receive. In addition, the figures indicate the contacts between the Office of Communication and citizen groups, rather than the actual number of private agreements negotiated.

It is the purpose of this chapter to provide a more accurate indication of the numbers and types of private agreements that were negotiated during the two-and-one-half year period between June, 1969, when the KTAL agreement was reached, and December, 1971. It is hoped that this information will provide a representation of the amount of activity that has taken place with regard to the development of the private agreement and citizen participation in broadcast regulation. Statistics have been included on the number of citizen organizations that were unsuccessful in challenging the licenses of broadcast stations, and on the number of license renewal applications which have been deferred by the Federal Communications Commission as the result of petitions to deny being filed by citizen groups.

A brief examination will also be made of the organizations such as the Office of Communication that have been instrumental in assisting the citizen groups. The study will include the history, purpose and services offered by these organizations.

The Private Agreement - Early Patterns

Although many of the private agreements negotiated between

licensees and citizen groups may differ regarding specific details, there seems to be a basic procedure and pattern to which nearly all the agreements conform.

Initially, there must be a group of citizens who are dissatisfied with the broadcast services being provided. Often these citizens become active because they have heard or read about the successes of private individuals who have negotiated with broadcast licensees in other communities. Although the size of the groups may vary, the individuals composing them must be dedicated because the negotiating effort involved often requires a period of three to five months to complete.[5]

Usually the first step taken by a citizens organization is to contact an agency such as the Office of Communication of the United Church of Christ. This is done so that the organization may take advantage of the knowledge and expertise acquired in earlier dealings with broadcasters in other communities. With the aid of an experienced adviser the citizens can specify their objections to the licensee's performance and begin collecting and evaluating evidence to support their objections. Finally, a list of demands is presented to the broadcaster and an offer made by the citizen group to begin negotiations to modify the licensee's service.

The licensee then has the choice of negotiating with the citizen group or having it file a petition to deny license renewal. If the petition is filed, it will be evaluated by the Federal Communications Commission and a decision made whether to dismiss it or call a hearing. If a hearing is called the citizens, taking advantage of their rights won in the WLBT case, may participate in the proceeding and present

their arguments before an FCC representative. In most cases, however, the licensee has chosen to negotiate with the citizen group.[6]

The agreements which have been negotiated with the licensees often contain five basic provisions. Included are promises by the licensee to:

1. Provide more relevant programming to the community.
2. Consult regularly with designated community representatives on station matters.
3. Employ more members of minority groups.

A promise by the citizen group to:

4. Withdraw their petition to deny and support the licensee's renewal application.[7]

And an understanding by both parties that:

5. The agreement will be filed with the FCC as an amendment to the renewal application, and that any failure by the licensee to abide by the agreement will be regarded as a failure to operate as set forth in the license.[8]

In addition to the basic provisions noted above, specific details of many private agreements have varied from community to community as they reflect the circumstances and needs perceived by citizen groups in each city. Additional reforms contained in private agreements have included training programs and scholarships for minority groups; increased news and public affairs coverage; public service and spot campaigns about community problems; institution of procedures to screen advertising for demeaning reference to ethnic and racial groups; additional

children's programs, and consumer information programs and announcements.[9]

The first negotiations between citizens and broadcasters in Texarkana, Texas involved only one licensee at television station KTAL. However, the negotiation procedure developed after KTAL did not remain limited to small a scale. Citizen groups have been able to exert influence in a much broader basis. One of the most significant and unique accomplishments in this regard occurred in negotiations held with the Capital Cities Broadcasting Corporation in 1970. The Corporation was attempting to purchase television stations in five separate communities.[10] Citizen groups in three of the cities involved enlisted the support of another public service advisory organization (the Citizens Communication Center) and filed petitions with the Federal Communications Commission to deny the transfer of the station licenses. More will be said about the Citizens Communication Center later. The citizens argued that Capital Cities had failed to demonstrate, as required by law, that its acquisition of the stations would be in the public interest.

Following the objections by the citizens groups Capital Cities representatives held a series of meetings with the citizens and their legal counsel. The broadcasters, recognizing the important voice the citizens held, expressed a desire to make a special effort to help alleviate problems in the communities they were proposing to serve. The negotiations resulted in a recognition by the broadcasters of the special problem of race relations and of minority groups in the cities involved. Consequently, Capital Cities proposed to spend one million dollars over a three year period for special programming designed to

help solve the minority group problems. The programming was to be produced in consultation with citizen representatives, and broadcast regardless of whether sponsorship could be obtained. In return for this pledge the petitions to deny the transfer of the station licenses were withdrawn by the citizen groups.[11]

Although the Capital Cities agreement did not deal directly with license renewal procedures, as have most private agreements, it serves as an important precedent for the private citizen's role in reforming the broadcast media.

Another important example of citizen organizations functioning on a larger, precedent-setting scale, occurred in Atlanta, Georgia and dealt directly with license renewal procedures. There, twenty black groups formed an organization called the Community Coalition on Broadcasting. Their purpose was to negotiate employment and programming agreements with all of the twenty-eight radio and television stations serving the Atlanta area.[12] The Coalition charged that the stations had not served the needs and interests of the Black Community in Atlanta.

Representatives of the groups in the Coalition were assisted by experts from both the Office of Communications of the United Church of Christ and the Citizens Communications Center in developing model agreements to be used as a basis of discussion with the Atlanta stations.[13] But once negotiations began, little progress was made toward reaching satisfactory agreements. The station operators attempted to delay progress in the hope that the deadline for filing petitions to deny their license renewal applications would pass, and the citizen groups would then be powerless to prevent the broadcasters from being granted, full,

three-year renewals.[14]

To prevent this delay tactic from succeeding the Coalition devised a new and significant strategy. It petitioned the Federal Communications Commission to withhold license renewals from the stations until the negotiations had been completed.[15] In an unprecedented action, the Commission granted a 30-day waiver of its rules to allow area-wide negotiations to continue. In granting the deadline extension the Commission recognized the importance of what the Coalition was attempting to accomplish. It stated:

> In view of the representation that you and the other signatories and the Atlanta Licensees are currently engaged in good faith negotiations regarding the tastes, needs, and desires of the Atlanta Black Community, the Commission has determined that a grant of your request would be in the public interest. You are therefore given . . . [an additional 30 days] . . . within which to file any formal pleadings relating to the pending applications for renewal of the license of the Atlanta broadcast stations.[16]

When the Atlanta broadcasters realized the Federal Communications Commission was willing to safeguard the Coalition's option to institute legal moves against them, they began to negotiate in good-faith. Within 30 days, agreements were signed with twenty-two of the twenty-eight stations involved.[17] The stations pledged to initiate, continue, or expand programs to hire members of the black community, and to improve efforts to determine and serve the programming needs of Atlanta's black community which constituted 47 per cent of the city's population.[18]

The Commission granted the Coalition additional extensions of the deadline to conduct negotiations with the remaining six stations. Only four petitions to deny were ever filed and two of those were withdrawn when agreement was reached.[19]

Aside from its own success, the Atlanta negotiating experience had a broader impact. As an attorney who had participated in the negotiations stated:

> The blanket "waiver-negotiate" strategy . . . became a prototype in many cities. Equally important, many of these cities were able to use the strategy on their own, with little help from outside counsel. The Atlanta experience yielded lay counselors and organizers, spreading the impact of the valuable knowledge and experience that had been gained.[20]

The large-scale effort used in Atlanta required considerable preparation and coordination. To negotiate simultaneously with twenty-eight stations local members of the Coalition had to be divided into separate teams. Local attorneys familiar with the legal work relating to broadcast license applications were recruited, briefed and assigned research projects to produce needed evidence.[21]

And as indicated in the preceding quote, the techniques developed and refined in Atlanta proved equally beneficial elsewhere as prototypes. In San Francisco, for example, a group of ten local attorneys volunteered their professional services to help a citizen group in negotiations with several area stations. The attorneys, all members of local law firms, organized an advisory group known as the San Francisco Lawyers Committee for Urban Affairs.[22] Of the 21 petitions to deny filed against licensees in California during 1971, ten were signed by such local counsel acting on behalf of local citizen organizations.[23]

This pattern was often repeated in other cities around the nation as the private agreement movement continued to expand. Local groups were formed in such cities as Cleveland and Detroit (the National Association of Black Media Producers);[24] in Chicago (the Illinois

Citizens Committee for Broadcasting, the Better Broadcasting Council of Chicago and the Taskforce for Community Broadcasting);[25] in Washington, D.C. (Black Efforts for Soul in Television);[26] and in Columbus, Ohio (the Columbus Broadcasting Coalition).[27]

The list of cities and broadcast stations affected by citizen groups is a large one and cannot be exhausted here, although some pertinent statistics regarding the stations involved will be presented in the next few pages. It is important to emphasize, however, that private agreements have followed a basic pattern as described earlier, have been used on a large-scale basis, and have been tailored to meet the specific needs of the community being served.

The Stations Affected

Much of the process leading to a private agreement occurs outside of existing institutional arrangements relating to broadcast regulation. This is true because the problems which the citizens and licensees are able to solve never reach officials.[28] In the case of broadcast regulation, of course, the official agency involved is the Federal Communications Commission. The negotiations leading to a private contract occur in the absence of the Federal Communications Commission, and the Commission is usually brought into the process only at the end when the terms of a settlement are filed with the station's license renewal application.

Certainly, the informal nature inherent in citizen-licensee negotiations is one reason for the success of the private agreement. This is true because the often cumbersome requirements of the traditional administrative-judicial process relating to the Federal Communications Commission are largely avoided.

But this informality also makes it difficult to accurately determine the amount of contact that has occurred between citizens and broadcasters since the KTAL agreement in 1969. If successful, the negotiation process occurs before a license renewal application reaches the Federal Communications Commission, and the Commission does not usually take note of this form of private ordering in its official records. The only occasions when the negotiating procedure may be officially recorded are when a licensee refuses to negotiate and a petition to deny is filed which must be reviewed by the Federal Communications Commission, or when an agreement is reached which contains provisions the Commission finds objectionable.[29]

For these reasons, then, an attempt to determine the number of situations in which negotiations between a citizen group and broadcaster occurred during the period June, 1969-December, 1971, must be based largely on unofficial records. Three sources have been used in this study to gauge citizen group activity. They include:

1. Information obtained from the Citizens Communication Center on the number of private agreements reached in which that organization either participated or was made aware of through other sources.[30]

2. A survey of all Broadcasting articles on the subject during the period under consideration.

3. The number of license applications which the Federal Communications Commission had deferred as the result of petitions to deny being filed with it. It must be recognized here, however, that in a few cases more than one petition to deny was filed against the same licensee.[31]

The degree of activity shown here is measured according to the number of broadcast stations involved in some form of negotiation or action with private citizen groups. This information is included in Tables I and II on pages 47 and 48. Summarized briefly, Table I shows 59 broadcast stations which have reached private agreements with citizens organizations.[32] The call letters and location of the stations are included. At the end of 1971 there were 77 license applications on the Federal Communications Commission deferred list because of petitions to deny which were filed against them.[33]

Table II on page 48 is a list of broadcast licensees who were unsuccessfully challenged by citizen organizations. In each of the 34 instances cited petitions to deny were filed by citizen groups, but the Federal Communications Commission found that the allegations made against the stations were not substantiated.[34] Consequently, all the challenged licenses were renewed for full, three-year terms.

The number of station licenses involved thus fall into three categories: (1) those having reached private agreements with a citizen group, (2) those whose license applications were challenged and subsequently placed on the Federal Communications Commission's deferred consideration list, and (3) those stations who successfully survived petitions to deny.

The total number of station call letters involved in some way with citizen group activity as included in these tables may be put at 147. However, if the number of licenses involved is considered, including various AM, FM and TV allocations associated with the same call letters, the number becomes 170 out of the approximately 7,400 total

TABLE I: STATIONS WHICH HAVE MADE AGREEMENTS WITH CITIZEN GROUPS

Station	Location
KADX-FM	Denver, Colorado
KBUY-FM	Dallas - Ft. Worth, Texas
KCIJ-AM	Shreveport, Louisiana
KCOP-TV	Los Angeles, California
KDFW-TW	Dallas - Ft. Worth, Texas
KELO-TV	Sioux Falls, S.D.
KENS-TV	San Antonio, Texas
KFRE-TV	Fresno, California
KSLA-TV	Shreveport, Louisiana
KTAL-TV	Texarkana, Texas
KTBS-TV	Shreveport, Louisiana
KXOL-AM	Dallas - Ft. Worth, Texas
WAGA-TV	Atlanta, Georgia
WAOK-AM	Atlanta, Georgia
WATL-TV	Atlanta, Georgia
WAVO-AM-FM	Atlanta, Georgia
WBAP-TV	Dallas - Ft. Worth, Texas
WBBM-Am-TV	Chicago, Illinois
WBBW-AM-FM	Youngstown, Ohio
WERD-AM	Atlanta, Georgia
WFAA-TV	Dallas - Ft. Worth, Texas
WFIL-TV	Philadelphia, Pennsylvania
WFMJ-AM-FM-TV	Youngstown, Ohio
WGKA-AM-FM	Atlanta, Georgia
WGST-AM	Atlanta, Georgia
WGUN-AM	Atlanta, Georgia
WHBQ-TV	Memphis, Tennessee
WIGO-AM	Atlanta, Georgia
WIIN-AM	Atlanta, Georgia
WKLS-AM	Atlanta, Georgia
WKRG-TV	Mobile, Alabama
WLS-AM-TV	Chicago, Illinois
WMAQ-AM-FM-TV	Chicago. Illinois
WNHC-TV	New Haven, Conn.
WPLO-AM-FM	Atlanta, Georgia
WQEO-AM	Albuquerque, New Mexico
WQXI-AM-FM-TV	Atlanta, Georgia
WREC-TV	Memphis, Tennessee
WRNG-AM	Atlanta, Georgia
WSB-AM-FM-TV	Atlanta, Georgia
WSNT-TV	Sandersville, Georgia
WSSA-AM	Atlanta, Georgia
WTJH-TV	Atlanta, Georgia
WYNX-AM	Atlanta, Georgia
WYZE-AM	Atlanta, Georgia

Time Period: June, 1969 - Dec., 1971.

TABLE II: STATIONS UNSUCCESSFULLY CHALLENGED BY CITIZEN GROUPS

Station	Location
KETV-TV	Omaha
KFAB-AM-FM	Omaha
KGBI-FM	Omaha
KLNG-AM	Omaha
KLXA-TV	Fontana, California
KMTV-TV	Omaha
KOIL-AM-FM	Omaha
KOOD-AM	Omaha
KVMN-FM	Pueblo, Colorado
KWGN-TV	Denver
KYNE-TV	Omaha
WERE-AM	Omaha
WESW-TV	Cleveland
WGAR-AM	Cleveland
WHK-AM	Cleveland
WIXY-AM	Cleveland
WJW-TV	Cleveland
WKBW-TV	Youngstown, Ohio
WKYC-TV-AM	Cleveland
WMAL-TV	Washington, D.C.
WMC-TV	Memphis
WOW-AM-FM-TV	Omaha
WTOP-AM-FM-TV	Washington, D.C.
WUAB-TV	Cleveland
WWJ-AM-FM-TV	Detroit

Time Period: June, 1969 - December, 1971

broadcast licensees in the United States.[35]

It may thus be concluded that the prediction by the Reverend Everett Parker cited at the beginning of this chapter did, in large measure, come true during the period following the KTAL precedent. Broadcasters in many of the nation's largest cities have begun to "routinely negotiate" with concerned citizens.

The citizen's role in broadcasting which first became important with the WLBT decision in 1966, and then was expanded even more with the KTAL agreement in 1969, has continued to grow. And in the view of many persons there is not much doubt that this movement will continue. FCC Chairman, Dean Burch, has predicted the trend will continue because as he said:

> Broadcasters are not going to be protected against the requirements of the Communications Act.
>
> * * * * * *
>
> [And] . . . by and large, this may be the scheme that was originally intended - more citizens playing a role in broadcasting.[36]

If citizens do continue to take a more active role in broadcasting, then the organizations which have assisted the citizen groups in the past will also become more important in the future. For this reason, two of the most experienced advisory groups, the Office of Communication of the United Church of Christ and the Citizens Communications Center, will be examined in the next section of this chapter.

The Office of Communication

The Office of Communication is a pioneer agency which brought about the first meaningful citizen participation in broadcast regulation. It

sustained the cause of local black organizations in Jackson, Mississippi in their lengthy legal battle against the Lamar Life Broadcasting Company, licensee of television station WLBT (Office of Communication of the United Church of Christ v. FCC).[37] The landmark decision resulting from that case became the cornerstone for the citizen group activity that has occurred since then.

The Office of Communication also provided the assistance which enabled a local citizen organization to negotiate the first private agreement with KTAL-TV, Texarkana, Texas, in 1969.[38] The Office has thus demonstrated a high level of commitment to the citizen group movement. An examination of the philosophy of the Church of Christ and its Office of Communication reveals the reason for this commitment.

The United Church of Christ is one of the nation's largest Protestant denominations.[39] The Church first established its Office of Communication in 1958 because it felt that the mass media must be used to help proclaim the Gospel.[40] It is the Christian ethic as expressed in the Gospel that forms the basis for the Office of Communication's function. Communication is viewed as a basic need of man, and as expressed by the Office's Director, the Reverend Everett Parker, this means that the Church has a moral responsibility to measure the use of the media, especially radio and television, by Christian standards and to act as a ministry to the media.[41]

Reverend Parker believes that Christian standards call for justice to be done and that " . . . any Christian that can see injustice around him and not speak out is a traitor to his faith."[42] He also feels that the Church incurs an obligation to demonstrate how much injustice can

be checked.[43] This doctrine, then, is applied by the Church to the communications industry. The Office of Communication has attempted to secure more access for citizens in the broadcast industy in particular, because as Dr. Parker says:

> When there is injustice people have to speak out, and the most effective place to be heard is in the marketplace of ideas, not the privacy of a closed room. If the marketplace [airwaves] is closed to certain people, this is the most unethical thing that can be done to them.[44]

Regarding its Christian mission, then, the Office of Communication has interpreted its function relating to the broadcast media as that of removing injustice by ensuring that all persons have the right to express themselves in the marketplace of ideas. This has been accomplished largely through its work with citizen groups.

In fulfilling this mission Dr. Parker does not have a large staff at his disposal. In addition to himself, there is a Deputy Director and two Associate Directors to engage in policy formulation. Four Associate staff members handle day-to-day activities such as writing, research, social action and educational projects. There is one Field Director and one Communications Analyst who are assigned primary responsibility for the Office's social action projects, which involve assisting citizen groups. And the clerical function is supervised by a General Manager in charge of four clerk typists.[45]

Despite this relatively small staff, however, the Office of Communication has been able to accomplish a great deal in the way of assisting citizen groups. The Office lists three primary areas here:[46]

1. Consultative advice by mail or telephone.

2. Field staff assistance in mounting a citizen action project.

3. Legal assistance in preparing petitions to deny license renewals.

The Office has provided at least one of these three services to some 100 separate community groups.[47] Despite this extensive record of involvement, however, the services are never offered unless a citizen organization first solicits them.[48]

The programs under which the Office of Communication has done much of its work in assisting citizen groups have been intended primarily to improve broadcast services provided minorities.[49] The Office has concentrated its efforts in this area because as Dr. Parker has said:

> Television and radio can be peculiarly vicious in trampling on the dignity of minority citizens who are at the bottom of the economic heap and are not greatly valued as customers. Broadcasting has glorified material standards and creature comforts and has raised the expectations of the poor, but has done little to help poor people achieve the prospects it dangles before them so alluringly. On the contrary, radio and television have avidly reported the turbulance, violence, destruction, frustration and despair of America's deprived people, but not their hopes and aspirations.[50]

For these reasons, then, the Office first began its work in 1964 in assisting a black minority being discriminated against in Jackson, Mississippi. Following the successful venture there, the Office, in 1968, launched a two-year program intended to combat racial discrimination in broadcasting in eleven other cities in the South.[51] This program became the basis for all of the Office's subsequent citizen group activity.

The program attacked two widespread discriminatory practices: (1) non-employment and under-employment of blacks, and (2) failure of stations to give blacks access to the air and to satisfy the needs and tastes of blacks. Action was taken through widely representative citizen groups, with both black and white members who observed station performance, analyzed the program service, and recommended needed improvements to station management. If stations were unresponsive, some citizen groups filed petitions to deny with the Federal Communications Commission.

However, when the project was concluded in 1970 it was realized that such discrimination was not limited only to the South. Consequently, the program was extended until 1972 and began operations in other areas of the nation as well.[52]

The funding for much of the Office's activity in assisting citizen groups has come in the form of grants from the Ford Foundation, rather than from the United Church of Christ. The Church pays the salaries for most of the Office staff, but there are many additional expenses involved. An initial Ford grant of $160,000 was used to cover costs of station monitoring by citizen groups, program analysis, and travel and legal fees for the eleven original community studies conducted between 1968 and 1970.[53]

One monitoring study, in which up to a dozen men and women may be hired and trained to observe a station's programming content, can cost as much as $5,000. This effort obtains the data necessary to analyze a station's performance and serve as acceptable evidence, should it be needed in an Federal Communications Commission proceeding.[54] Because

of these kinds of expenses it was only with an additional Ford Foundation grant of $100,000 that the Office's program was extended through 1972.[55]

The specific role of the Office of Communications staff in the project has been to: (a) develop applicable standards and procedures; (b) help each community form a broadly based citizen group to study and evaluate broadcast service; (c) help each group establish goals for its work; (d) furnish materials for the instruction of the group about the American system of broadcasting and how it is regulated; (e) provide the equipment needed for observing station performance and to assist in such observation; (f) analyze the data gathered by the observers; (g) help in the evaluation of station performances; (h) act as consultant to the citizen groups in their negotiations with station management and (i) supply legal counsel when necessary.[56]

Dr. Parker has described the project as a:

> . . . fundamentally self-help operation in which the project staff has given technical advice to citizens organizations that have determined what ethical principles should be championed, what objectives were desirable and what action should be taken to achieve the desired results.[57]

And in reviewing the first two years of the project Dr. Parker said:

> The project operated pragmatically. It entered new fields when the prospect of achieving constructive social change in broadcasting practice seemed good. In such cases staff members and money were committed to the extent needed to see the community ventures to conclusion. Conversely, when it became apparent that a citizen group did not have the will to complete a project or when charges made against the station proved to be unfounded work was dropped in favor of more promising ventures.[58]

After its extension in 1970, the citizen group assistance project was not limited to helping only black minorities. The new fields described above by Dr. Parker led the Office staff to consult with Mexican, Indian, Chicano and Asian minorities as well. Such cooperation occurred, for example, between an Office field representative and a coalition of 23 minority groups of different ethnic backgrounds in Dallas, Texas.[59] The group, called the Coalition for the Free Flow of Information, negotiated an agreement under which jobs, training programs, scholarships, and expanded public affairs coverage would be provided the minorities by broadcasters during the period 1971-1974.[60]

The specific research methods developed by the Office of Communication also merit a brief examination because they have become the prototype for nearly every citizen group.

The method used by the Office to collect data regarding a broadcaster's service is known as "observing," and was first employed in the WLBT case.[61] Observers are usually members of a citizen group who work in teams of three or more. The teams are racially mixed, where possible, to determine whether perception of program content or reactions to programs differ between members of different races.

Special reporting forms are used by each observer to report both facts and opinions. As observers watch and listen, audio portions of each program are tape-recorded to provide a permanent record.[62]

After a broadcast, the completed observation forms are compiled and analyzed. Descriptive information, such as the appearance of blacks on a television station during a stated time, is examined, often with

the aid of a computer. Subjective reactions of observers are recorded, analyzed and evaluated for the citizen group. Findings are summarized, then compared with the promises made by the station and the data it furnished the Federal Communications Commission in its license renewal application. The report is then used by the local citizen group in evaluating station performance and in developing future courses of action.[63]

In addition to the observation technique, the Office has devised methods for citizen organizations in examining employment reports, efforts made by broadcasters to ascertain community needs and interests, and station policy statements.[64] Such innovations have played a major role in achieving success for citizen groups.

Citizens Communications Center

The Citizens Communications Center is a public interest law firm, which since its establishment in 1969, has involved itself in many of the same types of citizen group efforts as has the Office of Communication.[65] As previously mentioned, Citizens was instrumental in securing the $1,000,000 pledge for minority groups from Capital Cities Broadcasting Corporation, and also played a significant role in negotiations between broadcasters and citizens in Atlanta. The organization has also cooperated directly with the Office of Communication in assisting citizen groups on a local basis.

Like the Office of Communication, the Center receives no payment for its public service work, and is thus largely dependent on gifts and

grants for its operating funds. During its first two-and-one half years of operation Citizens received grants from several organizations including the Midas International Foundation, Robert F. Kennedy Memorial,[66] and the Stern Family Fund.[67] In addition, Federal Communications Commission Commissioner Nicholas Johnson has directed that all royalties from his book How to Talk Back to Your Television Set be made available to the law firm.[68]

The staff of Citizens, like that of the Office of Communication, is a small one. When operations first began in 1969, only one attorney and a part-time secretary were employed. By 1971, however, the expanding work load had necessitated a staff of two attorneys, two secretaries, and a research assistant.[69] The organization's Director is Albert Kramer, a former Washington Communications Attorney, who serves as one of the Center's two full-time lawyers.[70]

The Citizens Communications Center has stated as its primary purposes:

> . . . [functioning as] a Washington based organization devoted to encouraging television and radio programming more responsive to the diverse needs and interests of all segments of the broadcasting audience. It functions principally as a service and support facility for local and national citizens' groups throughout the country and in their relationship with the Federal Communications Commission.[71]

Director Kramer has stated that his goal is to:

> Assist individuals and groups to understand the legal and bureaucratic complexities of dealing with the Federal Communications Commission.[72]

This goal is necessary because as Kramer says:

> There is, at the present time, no single professional resource to which these citizens can turn. The [local] organizations that do exist are staffed principally with relatively unsophisticated lay volunteers. The FCC is

> woefully understaffed, and to some extent prohibited as a matter of propriety from providing meaningful legal assistance to those who may become parties before it. Most local lawyers outside the Washington-based "Federal Communications Commission Bar Association" are simply at a total loss in dealing with the unfamiliar intricacies of FCC procedures. The Center will attempt to fill this gap by performing, without charge for its services a number of functions:
>
> -- It will prepare and distribute basic factual manuals on citizens' rights to access to the media and on FCC procedures.
>
> -- It will provide complainants with rudimentary legal and strategic advice and counsel in the initial stages of their proceedings.
>
> -- It will refer complainants to lawyers, other professional services, interested local groups or national organizations.
>
> -- It will undertake to provide research and perform other services on behalf of citizen groups at the FCC or in basic sources of published information.
>
> -- It will offer coordinating functions such as referrals, conferences and training institutes and newsletters.
>
> -- It will serve as an information center to provide information regarding lay, judicial, and administrative proceedings that may affect broadcasting in general and specific areas in general.
>
> -- In addition, the Center will, to the extent resources permit, undertake to provide direct legal representation in cases that appear to be particularly significant in terms of immediate effect on the community and on long-term legal principles. These might include license renewal proceedings, fairness complaints, or rule-makings.[73]

As the preceding quote implies, the Citizens Communication Center's activities are not limited exclusively to assisting citizen groups in dealing with local broadcast service. The Center also is active in Federal Communications Commission and court proceedings

which often establish broad guidelines for broadcast regulation. One example is the success Citizens had in challenging the Federal Communications Commission's 1970 License Renewal Policy Statement.[74] Another example is a case which the Center won in court which allows citizen groups to be reimbursed by broadcasters for expenses incurred while challenging a local licensee's service.[75] This case set an important precedent in broadcast regulation and will be discussed more fully in a later chapter.

Citizens Communications Center has, however, been active in offering direct assistance to local citizen groups. The Capital Cities transfer and the Atlanta cases are examples. In addition, Citizens has participated directly in license renewal challenges by citizen groups in a total of 36 communities,[76] including such cities as San Francisco, Sandersville, Georgia, Columbus, Ohio, and Detroit.[77] The organization has also participated in meetings, workshops and seminars at the local level designed to inform citizens of their rights and responsibilities regarding broadcasting.[78]

This chapter has attempted to give some indication of the degree of citizen group activity that has developed since the first private agreement was negotiated in 1969. In addition, a brief summary has been provided of the organization and services provided by two of the agencies that have been instrumental in the growth of the citizen group movement.

Clearly, citizen activism in broadcasting has increased at a very rapid rate. And the success of citizen groups throughout the

country indicates that this activity may be expected to continue.

But as this growth has occurred broadcasters have continuously expressed concern that citizen activism may ultimately harm the quality of broadcast service provided by the commercial licensees. A typical industry-oriented response to the citizen movement can be seen in an editorial which appeared in Broadcasting after the Capital Cities transfer agreement had been negotiated:

> . . . the process of challenge and concession is getting out of hand when Washington-based and Washington-wise lawyers start making careers out of representing the challengers . . . . If the trend persists . . . the system will be degraded.[79]

The question of citizen intervention "degrading" the system will be taken up in the next chapter. An examination will be made concerning whether citizen activism, in the form of the private agreement, is in the public interest.

FOOTNOTES

[1]Reverend Everett C. Parker, Racial Justice in Broadcasting, Office of Communication of the United Church of Christ, (June, 1970), p. 16.

[2]Ibid.

[3]"How United Church Stirs Up the Cats," Broadcasting, October 6, 1969, p. 37.

[4]"The Pool of Experts on Access," Broadcasting, September 20, 1971, p. 36.

[5]Marsha O'Bannon Prowitt, Guide to Citizen Participation in Radio and Television, Office of Communication of United Church of Christ, New York, (1971), p. 20.

[6]"Up the Establishment, How to Play the New Game," Broadcasting, January 11, 1971, p. 20.

[7]Ibid.

[8]Robert G. Heiss, "The Texarkana Agreement As A Model Strategy for Citizen Participation in FCC License Renewals," Harvard Journal on Legislation, Vol. 7 (May, 1970), p. 628.

[9]Prowitt, Guide to Citizen Participation, p. 10.

[10]"A Spurt in the Price of Pacification," Broadcasting, January 11, 1971, p. 20.

[11]Ibid., p. 21.

[12]Parker, Racial Justice in Broadcasting, p. 10.

[13]"Atlanta Stations Face Bias Charges," Broadcasting, January 12, 1970, p. 10.

[14]Ibid.

[15]Progress Report, Citizens Communication Center (May, 1971), p. xv.

[16]Quoted in Parker, Racial Justice in Broadcasting, p. 10.

[17]"Rapproachment in Atlanta Renewals," Broadcasting, April 6, 1970, p. 27.

[18]Ibid.

[19]Progress Report, Citizens Communication Center, p. xvi.

[20]Ibid., xvii.

[21]"Experts on Access," Broadcasting, p. 36.

[22]"The Struggle Over Broadcast Access," Broadcasting, September 20, 1971, p. 38.

[23]"Catchword in California Renewals: Minorities," Broadcasting, November 8, 1971, p. 43.

[24]"Blacks Issue Cleveland Ultimatum," Broadcasting, September 21, 1970, p. 23.

[25]"Chicago Renewal Clouds Part," Broadcasting, March 8, 1971, p. 36.

[26]"New Challenges From Every Side," Broadcasting, September 8, 1969, p. 25.

[27]"Blacks Challenge Ohio Renewals," Broadcasting, September 7, 1970, p. 33.

[28]"The Texarkana Agreement," Harvard Journal on Legislation, p. 635.

[29]Bob Jones University, Inc., 22 RR 2d 410 (1971).

[30]Letter from Sue Dillon, Citizens Communications Center, January 19, 1972, and survey of Broadcasting articles June, 1969 - December, 1971.

[31]"California Renewals," Broadcasting.

[32]Letter from Citizens Communications Center, January 19, 1972.

[33]"California Renewals," Broadcasting, p. 43.

[34]Survey of Broadcasting articles, June, 1969 - December, 1971.

[35]"The FCC's License Renewal Policies - A Turn of Events, Some Unanswered Questions, And a Proposal," St. Louis University Law Journal, Vol. 15 (1970-71), p. 96.

[36]"The Struggle Over Access," Broadcasting, p. 26.

[37]Office of Communication of United Church of Christ v. FCC, 7 RR 2d 2003 (1966).

[38]Norman Lobsenz, "Everett Parker's Broadcasting Crusade," Columbia Journalism Review, Vol. 8 (Fall, 1969), p. 34.

[39]Office of Communication of United Church of Christ v. FCC, RR 20 2003.

[40]Ernest Phelps, "The Office of Communication: The Participant Advocate - Its Function As a Broadcast Citizen Group - March 1964 to March 1971," Ph.D. Dissertation, The Ohio State University (1971), p. 20.

[41]Ibid., p. 19.

[42]Lobsenz, "Parker's Broadcasting Crusade," p. 30.

[43]Phelps, "The Office of Communication," p. 19.

[44]Lobsenz, "Parker's Broadcasting Crusade," p. 30.

[45]Phelps, "Office of Communication," p. 21.

[46]Prowitt, Guide to Citizen Action, p. 34.

[47]"New Deal in Dallas - Fort Worth," Broadcasting, July 12, 1971, p. 33.

[48]Parker, Racial Justice in Broadcasting, p. 5.

[49]Ibid., p. 3.

[50]Ibid.

[51]"Foe of Bias in Broadcasting Is Hopeful," New York Times, July 1, 1970, p. 91.

[52]Parker, Racial Justice in Broadcasting, p. 4.

[53]Lobsenz, "Parker's Broadcasting Crusade," p. 34.

[54]Ibid.

[55]New York Times, July 1, 1970, p. 91.

[56]Parker, Racial Justice in Broadcasting, p. 5.

[57]Ibid.

[58]Ibid., p. 4.

[59]"Renewal Rangers," Robert L. Shayon, Saturday Review, August 21, 1971, p. 38.

[60]Ibid.

[61]Lobsenz, "Parker's Broadcasting Crusade," p. 31.

[62]Parker, Racial Justice in Broadcasting, p. 6.

[63]Ibid.

[64]Prowett, Guide to Citizen Action, p. 24.

[65]"New Group to Aid Citizens at FCC," New York Times, October 4, 1969, p. 71.

[66]"Inside the FCC," Television/Radio Age, June 28, 1971, p. 63.

[67]"Experts on Access," Broadcasting, p. 36.

[68]Ibid.

[69]Citizens Communications Center, Progress Report, Washington, D.C., (May, 1971), p. 8.

[70]"Experts on Access," Broadcasting, p. 36.

[71]Citizens Communications Center, Primer On Citizens' Access to the Federal Communications Commission, Washington, D.C., (1971), p. 53.

[72]New York Times, October 4, 1969, p. 71.

[73]Citizens Communications Center, Primer, p. 54-55.

[74]"Implications of Citizens Communications Center v. FCC," Columbia Law Review, Vol. 71 (December, 1971), p. 1500, and Citizens Communications Center v. FCC, 22 RR 2d 2001.

[75]KCMC, Inc., 20 RR 2d 267.

[76]List of Stations Which Have Made Agreements with Citizen Groups, Citizens Communications Center, January, 1972.

[77]Citizens Communications Center, Progress Report, p. xvii - xxi (appendix).

[78]Ibid., xxxi.

[79]Editorial, Broadcasting, January 11, 1971, p. 76.

CHAPTER V

THE PRIVATE AGREEMENT: IS IT IN THE PUBLIC INTEREST?

As indicated in the preceding chapters, the implementation of the private agreement as an effective bargaining tool for citizen groups has greatly expanded the citizen's role in the broadcast regulatory process. The widespread use of this activist tactic has meant that for the first time, broadcasters have begun to share some of their previously unchallenged sovereignty in operating their stations. This is particularly true regarding the industry's tradition of nearly exclusive decision-making power over matters such as programming and employment.[1]

Because of its significant impact, the continued and expanding use of the negotiation-private agreement procedure by citizen groups has thus become an important phenomenon in broadcasting today. And because of the agreement's importance, the question of whether it is in the public interest has inevitably been raised.

The purpose of this chapter is to examine the private agreement and the increased citizen participation it brings about in lieu of the public interest criterion set forth in the Communications Act.[2]

An analysis will be made of the allegation that the private agreement serves only the interests of a select few, rather than the interests of the entire public. In addition, an attempt will be made to outline efforts made by the Federal Communications Commission to safeguard

against abuses in the private agreement negotiating procedure and to provide for more effective communication and cooperation between broadcasters and their public.

The Broadcasters' Objections

Implementation of the private agreement by citizen groups has had two major interrelated effects on the broadcasting system in this country. First, the influence of citizens over the character of the broadcast service they are provided has been greatly increased. And second, the autonomy broadcasters have in deciding how to operate their stations has been reduced somewhat.

It is not surprising, then, that the challenge as to whether the private agreement should be accepted in the overall scheme of broadcast regulation has come from within the ranks of the broadcasting industry itself. Clearly, the industry feels threatened, for it is faced with what it regards as a very real dilemma. As Broadcasting has stated, members of the industry believe that:

> . . . to a growing number of [citizen] groups across the country, it is clear, broadcasting is too important to be left to the broadcasters. The groups are determined to make their impact. In the process, they are presenting broadcasters with tough new problems, not the least of which is how to accommodate the [citizen group] demands while serving the mass audience, which is the broadcaster's principle business, and to maintain control over his program service, which is his responsibility as a licensee.[3]

The specific objections voiced by the industry against the private agreement have taken many forms. But perhaps the most comprehensive and articulate statement of the broadcaster's position has come from

Richard W. Jencks, former President/CBS Broadcast Group. Mr. Jencks made his remarks concerning the private agreement before a broadcasting industry symposium in Washington, D.C.,[4] approximately eighteen months after the first private agreement had been negotiated with station KTAL and approved by the Federal Communications Commission.[5]

The criticisms put forth by Mr. Jencks took two forms: philosophical and legal.[6] On a philosophical basis, Mr. Jencks stated that the emergence of the prvate agreement " . . . raised a basic question as to the purpose of a mass medium in a democratic society."[7] He said this is true primarily because of the demand by citizen groups that portions of a broadcast station's programming schedule be made up of material that is relevant to the particular community or minority group involved. And, " . . . this is added the requirement that the leaders of the minority group shall be the judge of both the relevance of such programming and of its faithfulness in reflecting lifestyles."[8]

Mr. Jencks stated that such demands amount to broadcast regulation by private contract and necessitate a choice as to whether:

> . . . the broadcast medium [should] be used as a means for binding its audience together through programming which cuts across racial and cultural lines Or should it be differentiated segments of its audience?
>
> * * * * * *
>
> It seems possible that there is a strong thread of racial separatism in the demand for relevance.[9]

In Mr. Jencks view, then, the proper role for broadcasting, and for television in particular, is not to foster a kind of separatism in which each ethnic group in the audience is communicated to individually,

or where the needs and concerns of only one small group are fulfilled. Quite the contrary:

> . . . the importance of television as a mass medium has not been in what has been communicated to minorities as such - or what has been communicated between minority group leaders and their followers - but in what has been communicated about minorities to the general public [emphasis provided].[10]

Thus, Mr. Jencks concluded that the philosophical question raised by citizen group demands is whether a mass medium such as broadcasting is to be used to divide or to unite the diverse segments of a population. Obviously, he favors the latter alternative and believes that the effect of the private agreement is produce separatism and non-communication between the different groups in our population.

From a legal standpoint, Mr. Jencks feels that the private agreement causes further harm to the present system of broadcasting because it has the effect of preventing, or at least improperly supplementing, the proper regulatory role of the government in broadcasting. He alleges that the private agreement amounts to private regulation and represents an abdication of responsibilities which should be carried out by the Federal Communications Commission. The private agreement, then, "short-circuits" procedures originally intended to be implemented by our established political and social institutions.[11]

Mr. Jencks believes that the concept of citizens acting as "private attorney generals"[12] to protect the public interest in a manner such as that suggested recently by Federal Communications Commission Commissioner, Nicholas Johnson,[13] is improper. As Jencks states:

> Clearly, there is at the heart of this matter a broad question of public policy - namely whether public control of licensee conduct should be supplemented by any form of private control. It is plain that the encouragement of 'private attorney generals' will result to some degreee in the evasion of the legal and constitutional restraints which have been placed upon the regulation of broadcasting in this country.[14]

To support his argument, Mr. Jencks says, for example, that some community groups demand the right to prescribe certain specified programming for a station even though the Federal Communications Commission has said many times it cannot prescribe or define particular programming for a station and that this choice must remain the licensee's discretion.[15]

Similarly, he asserts that some citizens have demanded that racial quotas be applied with respect to a station's employment practices, despite the fact that " . . . neither the Commission nor other federal and state agencies concerned with discrimination would or could impose upon the station an unlawful quota system."[16]

And finally, Mr. Jencks states that, despite all these demands by citizen groups, there are no assurances that the groups are representative " . . . of the individuals for whom they speak."[17]

In essence, then, the objections raised by members of the broadcasting industry, as represented here by Richard Jencks, are grounded mainly on two points: (1) that citizen groups will have the effect of forcing an industry best suited to serve the mass audience, to cater to special interests instead, (2) and that private agreements supplement and "short-circuit" the regulatory role that should more properly be carried out by the Federal Communications Commission. The threat here

is that through a private agreement a citizen group may force a broadcast station to do something which the Commission either could not or would not require the station to do.[18]

The Citizens' Responses

However, spokesmen for citizen groups, and for organizations which have assisted citizen groups in negotiating private agreements, contend that the dangers alluded to by the broadcasters are really not as imminent as might be supposed. Their argument is based on two important factors: (1) That an examination of the activities of citizen groups and the agreements negotiated by them does not generally support the broadcasters' contentions of minority group coercion, and (2) that the Federal Communication Commission's proper regulatory role has not been subverted by the private negotiating process. This is true because the Commission still possesses adequate authority and has implemented policies to ensure that the negotiating procedure between the citizen group and the licensee is not abused.[19]

In addition, a third factor is important in evaluating the legitimacy of the use of the private agreement in broadcasting. That factor is the concept of judicial review of Commission actions. Either a broadcaster or a citizen group that protests an FCC decision may appeal the decision to the Federal Appeals Court for the District of Columbia, and then to the Supreme Court of the United States, if necessary. A recent court decision which addresses itself to the issue of reimbursing citizen groups for expenses incurred in legal actions against licensees is a good example of this procedure and will be examined later in this chapter.[20]

Among those who have addressed themselves specifically to the objections that have been raised concerning the use of the private agreement are two men who have been intimately associated with the citizen group movement. They are Earl K. Moore, a communications attorney who has represented the Office of Communication of the United Church of Christ in many of the cases it has brought before the Federal Communications Commission, and Ralph M. Jennings, Communications Analyst for the Office of Communication.

Mr. Moore has disputed the charge that community groups do not represent the entire public interest and that they force a station to satisfy the special needs of minorities only.[21]

He states, for example, that an examination of the first agreement reached between a citizen group and broadcast licensee in Texarkana, Texas, shows that the private agreement contained many provisions to improve broadcast service for the entire viewing public.[22] Paragraph one of the agreement's Statement of Policy specifies that:

> KTAL will continue to observe all laws and Federal policies requiring equal employment practices and will take affirmative action to recruit and train a staff which is broadly representative of all groups in the community [emphasis added].[23]

Similarly, other sections of the agreement contain provisions which will aid not just one particular minority, but the entire community as well. Additional examples from the agreement are included here which pertain to such community-wide concerns as public affairs, religious and network programming, community needs and personal references.

Public Affairs:

> KTAL recognizes its obligation to present regular programs for discussion of controversial issues, including, of course, both black and white participants. The station will not avoid issues that may be controversial or divisive, but will encourage the airing of all sides of these issues [emphasis added].[24]

Religious and network programming:

> KTAL religious programming should cover the entire range of religious thought. As part of its continuing effort to meet this obligation, KTAL will carry the religious programs presented by NBC representing the three primary American faiths. A discussion program will also be presented . . . . KTAL will regularly present ministers of all races on local religious programs. These ministers will be regularly rotated, in an effort to represent fairly, all religious groups.
>
> Network programs of particular interest to any substantial group in the service area will not be preempted without appropriate advance consultation with representatives of that group [emphasis added].[25]

Community needs and personal references:

> KTAL will regularly announce on the air that the station will consult with all substantial groups in the community regarding community taste and needs and will accept suggestions on how to best render this service.
>
> KTAL will make no unessential references to the race of a person. In cases where such references are made, the same practice shall be and will be followed for blacks as for whites [emphasis added].[26]

As Attorney Moore has stated, "In other words, nothing in the agreement required any special treatment of blacks . . . " or other minorities.[27]

The structuring of agreements to serve entire communities, rather than specific minorities, has also been the practice in other private agreements negotiated by citizen groups which were advised or assisted by the Office of Communication.[28] In addition, these

agreements reached by groups not directly associated with the Office of Communication have been modeled largely on the KTAL precedent.[29]

However, despite the fact that private agreements can usually be shown to be of benefit to the entire community, it must be emphasized that there are other measures of protection available to ensure that the larger public interest is protected. These measures have the effect of acting as a filter through which the demands of a citizen group must pass before they are implemented by the broadcaster.

Initially, when a station is approached by a citizen group it has the option of simply refusing to negotiate the demands that may be presented. This is the first step in the filtering process protecting both the broadcaster and the general public. If the licensee feels that the demands being made are unreasonable, and possibly detrimental to the interests of the entire community, a refusal to negotiate will leave the next step up to the citizen group.

In some cases, a licensee's refusal to discuss what it considers to be extreme demands has meant that the citizen groups concerned simply do not pursue the issue further.[30] However, in other instances the refusal to negotiate results in a petition to deny being filed against the licensee.

If a petition is filed, the Federal Communications Commission then carries out the second step in the screening process. It will consider the objections set forth in the petition and decide whether they merit calling a hearing and allowing both the citizen group and the licensee to present their respective viewpoints.

Thus it can be seen that a broadcaster is not compelled to surrender immediately to the demands of citizen groups. He has the option of refusing to negotiate with them, although it must be realized that such a decision includes the risk of the licensee eventually facing a challenge when he files his renewal application. In addition, if a hearing is called, the broadcaster will have to successfully rebut the charges made by the citizen group.

A further safeguard, or screen, intended to prevent minority group coercion of broadcasters was provided for in the 1966 United Church of Christ decision.[31] In the event that the Commission does designate a station's renewal application for a hearing, it has the authority to ensure that the public interest is properly represented. As the 1966 decision stated:

> The Commission should be accorded broad discretion in establishing and applying rules for . . . public participation, including rules for determining which community representatives are to be allowed to participate and how many are reasonably required to give the Commission the assistance it needs in vindicating the public interest.[32]

According to the court, the Commission has the authority to establish procedures to determine who should be granted standing to appear as spokesmen for the public. Such procedures will prevent a particular minority or citizen group from misrepresenting the interests of the entire community concerned.

This third safeguard, then, will protect the broadcaster and the public from unreasonable minority demands. It will also ensure, to a certain degree, that the Federal Communications Commission will be able

to prevent the " . . . evasion of legal and constitutional restraints . . . placed upon the regulation of broadcasting . . ."[33] which were referred to earlier by Richard Jencks. Examples of the Commission fulfilling this function will be included later in this chapter.

Certainly, all of the preceding examples will, in some measure, contribute to the safeguarding of the broadcasting system from citizen group coercion. But perhaps the most important safeguard against the threat of minority domination through the private agreement is a final Commission level method of scrutiny to which citizen demands are subjected. And it would appear that most critics of the private agreement have chosen to ignore this vital point.

Ralph M. Jennings, Communications Analyst of the Office of Communication, explained this important protective procedure when he wrote that, in a sense, the "private" agreement eventually becomes "public" as well:

> . . . it may be inappropriate to characterize negotiated agreements as 'private agreements,' although I realize that the broadcasting industry is at great pains to do just that. Actually, all of the agreements reached as a result of our assistance have been filed by the stations with the FCC as amendments to their license renewal applications. If these agreements were not in the public interest, the Commission could refuse to accept them.[34]

The final protective measure within Commission control, then, is that the Federal Communications Commission itself must analyze each of the agreements. To ensure that the Commission will examine each agreement a statement is usually included in the text of the document when it is negotiated which requires that the agreement be filed with a station's renewal application. A quote from the KTAL agreement provides an

example of the procedure intended:

> This agreement and this statement will . . . be filed with the Federal Communications Commission as an amendment to the pending renewal application. Any material variance from said statement shall be deemed to be a failure to operate substantially as set forth in the license.[35]

The Commission is informed that if the provisions of the agreement are accepted by it, the citizen group will withdraw its petition to deny. Again, a quote from the KTAL agreement serves as an example:

> Simultaneously with the filing of said statement, petitioners will join and hereby join in requesting the Federal Communications Commission to give no further consideration to the pleadings filed by petitioners, or any of them, with respect to KTAL-TV. Petitioners also join in requesting the Federal Communications Commission to renew KTAL-TV's television broadcast license for a full term.[36]

As Mr. Jennings emphasizes, it is apparent that the provisions contained in the agreements negotiated between citizen groups and licensees are not implemented as official station policies until they are first examined and approved by the Federal Communications Commission. The private agreement becomes public because the highest level broadcast regulatory agency in government evaluates it according to the public interest criterion.[37]

It would appear, then, that the private agreement does not prevent a proper regulatory role by the government in broadcasting, nor does it represent an abdication by the Federal Communications Commission of its statutory obligations.

FCC Attempts to Safeguard the Negotiating Process

There are many instances in which the Commission has used some

or all of the procedures described in the preceding pages to safeguard the public interest from what it has interpreted as abuses of the private agreement - negotiating process. For example, the Commission has issued decisions in which it set forth criteria to be used in evaluating the charges contained in petitions to deny filed by citizen groups.

The first of such precedents set by the Commission came in its refusal to designate for a hearing the license renewal application of station WMAL in Washington, D.C.[38] Two groups of Washington area citizens, the Black United Front and Black Efforts for Soul in Television(BEST), had filed a petition to deny WMAL's renewal in September, 1969.[39] The petition charged that the Evening Star Broadcasting Company, owner of the station, had discriminated against blacks in both its programming and employment practices.[40] The petitioners alleged that the licensee's programming was inadequate and not "relevant" to the needs of the blacks which constituted seventy per cent of the Washington, D.C., viewing community. And regarding employment practices, the petitioners said the licensee exhibited a " . . . pattern of substantial failure to accord equal employment opportunities . . ."[41] for blacks.

However, after examining the charges made by the citizen group and the information provided in the licensee's renewal application the Commission dismissed the petition.[42] In doing so, the Commission demonstrated that it would not attempt to evaluate the way in which a licensee treats such issues as serving a particular segment of its

listening or viewing public's needs unless the complainant was able to provide specific instances of improper conduct which raised substantial questions of fact. With respect to the charge that WMAL had provided inadequate programming specifically intended for the black community the Commission said:

> . . . we emphasize that many types of programming cannot be broken down into that for Black people and that for others. Were the Commission to require such a breakdown of programming according to the racial composition of the city of license, we would effectively be prohibiting the broadcast of network and other nationally presented programming. Without addressing ourselves to the legality of such a requirement, it is sufficient to say that such 'separate programming' is not feasible . . . . Petitioners assert, however, that the special problems of the District of Columbia . . . give rise to a need for specific programming designed to meet the needs and interests of the community. With this contention there is no dispute, but we are of the opinion that the licensee has, by the programming noted [earlier] . . . clearly shown that it has broadcast numerous programs which are of particular interest to the District of Columbia Black population. These programs have dealt with both national and local problems, and the licensee has regularly scheduled, locally produced public affairs program[s] dealing with community and national problems.[43]

And the Commission concluded that there was no evidence offered by the petitioners of WMAL's alleged discrimination:

> It is significant, in this respect that Petitioners do not allege any instance where the licensee has refused to broadcast programming because of the presence of Black persons in that programming . . . . The fact that Petitioners believe that Black persons presented on WMAL-TV are not the type to which they can 'relate' does not warrant any action by the Commission since this factor is highly subjective in nature and is incapable of being analyzed in relation to the licensee's overall programming record.[44]

The Commission based its rejection of the employment discrimination charge on essentially the same reasoning used to dismiss the

programming allegation, that of a lack of specific evidence being presented. The petitioners had claimed that employment of minority groups was inadequate. But the Commission said:

> . . . we do not agree that the licensee is guilty of a 'shocking and blatant racial discrimination in employment.' The statistics furnished by the licensee . . . show that the Evening Star Broadcasting Co., has a substantial number of minority group employees.
>
> * * * * * *
>
> Here we are not faced with a 'pattern of substantial failure to accord equal employment opportunities.' Indeed, there is no allegation that any person has been denied or discouraged from applying for employment by the licensee because of his race, and the licensee does not evidence an overall neglect of its responsibility . . . to exclude every form of prejudice.[45]

The precedent established in the WMAL proceeding is clear. The Commission reaffirmed its requirement that a licensee must reflect the needs and interests, including programming and employment requirements, of the entire community being served. However, it will not accept allegations by citizen groups which involve essentially value judgments such as a program's "relevance" to a particular segment of the community.

The Commission will consider a petition which raises questions of fact, but only if those questions are supported by specific instances of improper conduct. As one author viewed the meaning of this case:

> . . . in its order, the Commission provided broadcasters and citizen groups alike with some indication as to how far it feels it can, or will, go in responding to . . . most citizen groups' major complaints - the alleged lack of relevance to blacks [or other minorities] in programming.[46]

The WMAL case is one which can also be interpreted as an example of the Federal Communications Commission using its authority to prevent

citizen group coercion of a broadcaster. The precedents established in that case have since been followed to evaluate citizen demands in many other cities. Recent examples include Memphis, Tennessee,[47] Youngstown, Ohio,[48] and Pueblo, Colorado.[49]

Another significant example of the Commission's actions in this regard occurred when a Mexican-American citizen group in Denver filed a petition to deny against a local licensee. The group then offered to withdraw the petition subject to the condition that the licensee either make a $15,000 contribution to the citizen group, or agree to hire two Spanish-surnamed employees at specified salaries.[50] During a negotiating session spokesmen for the citizen group informed the licensee that unless one of the two actions were taken by the licensee, and agreement between the citizens and broadcaster would never be reached.

The Commission found that the issues raised in the petition were not substantiated, and subsequently dismissed the citizen group's charges. But in doing so, the Commission also condemned the citizen group for action which the Federal Communications Commission felt jeopardized the concept that good faith negotiations between licensees and the public are beneficial. The Commission said the tactics exhibited by the citizen group in this case would not be acceptable:

> The Commission has consistently encouraged community groups and licensees to meet in order to resolve their differences . . . . We have taken this approach in the belief that such problems are best resolved at the local level, rather than through government intrusion. However, while we realize the great contribution made by responsible and representative citizen groups in promoting more responsive broadcast service, we fail to see how a demand for a contribution of any amount made contingent on the

> filing vel nom of a petition to deny contributes to worthwhile negotiations between such groups and broadcast licensees. Rather, we are of the firm opinion that such demands are contrary to the concept of good faith negotiations and the public interest.[51]

Thus, the Commission, once again exercised its authority and gave an indication as to what it feels should constitute proper conduct on the part of a local citizen group.

Another example of such Federal Communications Commission analysis of citizen group petitions occurred in Omaha. The Commission was faced with a citizen group which had filed a petition to deny a total of thirteen broadcast stations on the grounds that the stations' employment and programming policies were not consistent with the needs of the area's black community.[52] In addition, the citizen group asked that the Commission require that the stations make financial contributions to black organizations and activities as a condition to their license renewal.[53]

However, in evaluating the petitions the Commission once again concluded that there were no allegations supported by factual evidence. Consequently the citizen group was told that unless it could provide " . . . detailed evidence that a broadcaster has failed to program his station to meet community needs, interests and problems . . . "[54] the petitions would be dismissed and the licenses renewed.

More specifically, the Commission required information pertaining to the employment discrimination charge that would show employment had been refused on the basis of race, creed, color, sex, religion or national origin. And regarding the charge of programming discrimination,

the Commission required evidence that the broadcaster had substantially ignored community problems, including problems of a " . . . significant minority residing within his community of license."[55] The petitioners were informed that they had until the normal license renewal deadline to provide the additional information.[56]

However, concerning the financial contributions requested by the citizens the Commission stated simply that it:

> . . . could not legally require broadcast licensees to channel money into the black community or business firms, provide scholarships for minority-group youngsters, or employ minority-group members on their board of directors. Such matters are obviously extraneous to the Commission's regulatory functions, and thus, we could not lawfully impose such requirements on broadcast licensees.[57]

The preceding examples, then, serve to demonstrate how the Commission can act to protect the broadcaster and the public from what may be interpreted as extreme demands by activist citizens filing petitions to deny.

The Commission has also set some precedents regarding action that can be taken at a different level in the procedure outlined earlier which shields the public interest from unreasonable minority demands. That level, as previously mentioned, is the Commission's practice of examining private agreements when they are submitted as amendments to license renewal applications.

One modification by the Federal Communications Commission of a private agreement occurred because the Commission felt a licensee had conceded too much responsibility to a citizen group. The case involved Bob Jones University, Inc., licensee of WAVO-AM-FM, Decater, Georgia,

and a citizen group called the Community Coalition on Broadcasting (CCB).[58]

The section of the agreement to which the Commission objected stated that the licensee would make maximum use of all available network programming of special interest to the black community, would air such programming at the regularly scheduled time, and would not preempt the programming without advance consultation with representatives of the CCB.[59] In addition, the agreement provided that the ultimate judge of what constituted such special programming, and appealed to the culture and values of the black community, would be members of the minority group only.

In the Commission's view, such a policy would, if strictly interpreted, " . . . improperly curtail the licensee's flexibility and discretion in the matters of programming and program scheduling . . ."[60] Consequently, the licensee was reminded by the Federal Communications Commission that ultimate responsibility in such matters must be retained by him. The Commission did not require that the wording of the agreement itself be changed. But it emphasized that its interpretation of the wording would mean that:

> . . . the licensee, in determining the problems, needs and interests of the minority groups and the authenticity or portrayals of minority life, culture, and values, will consult with and seek the views and opinions of the leaders of representative minority groups in the community [emphasis added].[61]

Satisfied, then, that such an interpretation would be applied by both the citizens and licensee, the Commission approved the license renewal and the accompanying agreement.[62]

An additional case involving Commission review of a private agreement, United Church of Christ v. FCC, must also be considered here.[63] The case, which must be distinguished from earlier ones of the same name, resulted initially in the Federal Communications Commission disallowing a proposed extension of a private agreement. The section of the agreement objected to by the Commission had called for voluntary reimbursement by a licensee of expenses incurred by a citizen group after the citizens had challenged the licensee's renewal application and an agreement had been reached.

However, the Federal Communications Commission's action in this case led eventually to another procedural level available to those who may feel a private agreement adversely affects the public interest, even though examined by the Commission. That process, judicial review of Federal Communications Commission decisions, was cited earlier in this chapter and is the final step in the safeguards available for protecting the public interest.

The safeguard worked differently in this case, however, than in preceding examples cited here. In United Church the court ruled that the FCC's objections to the private agreement were harmful to the public interest, rather than citizen demands or an agreement provision being harmful. Consequently, the entire agreement and the important precedent it sought, were allowed to stand.

The next section of this chapter will, in addition to demonstrating the process of judicial review, examine the issue involved in United Church, the action taken by the Federal Communications Commission regarding the private agreement concerned, and the eventual court decision

which countermanded the Federal Communications Commission's decision and established an important precedent.

Reimbursement by Licensees of Citizen Group Expenses

The issue of whether citizen groups should receive payment for legal expenses incurred in challenging a license renewal is an important, as well as a complex one. Adhering to one viewpoint are many broadcasters who claim that if citizen groups have the prospect of securing payment from licensees for expenses resulting from a negotiating venture, or license challenge, they will only prolong the process in order to secure as much money as possible. And an additional hazard seen by the broadcasters is the possibility that some challengers may be motivated solely for the purpose of obtaining money.

Holding a different opinion, however, are citizen groups, and advisory organizations such as the Office of Communication and the Citizen Communications Center. These advocates feel that if citizen participation in broadcast regulation is going to be meaningful, some method must be found for providing minimum financing to alleviate the large expenses involved. As a spokesman for the Citizens Communications Center viewed it, such expenses may severely limit citizen group activity:

> If citizen groups cannot obtain reimbursement for their expenses, the cost of litigation and participation in the regulatory process may become prohibitive. Not only are there too few groups . . . that can provide free counsel, but these groups are themselves dependent on foundations, and long run foundation support is highly unlikely. It is thus necessary for new sources of funding to be found. Reimbursement is one such source. It imposes upon errant licensees the costs incurred in calling them to task for their excesses.[64]

The reimbursement issue was first raised during the same citizen group-licensee negotiations that produced the first private agreement in 1969 between the licensee of KTAL-TV and citizens of that community.[65] As previously mentioned, the Office of Communication of the United Church of Christ provided most of the assistance, both legal and general, that was used by the community groups in Texarkana in preparing the documentation necessary for an effective license renewal challenge.

The Office of Communication, however, has no attorneys on its staff and thus must retain legal advisers from independent communications law firms, and of course, pay the accompanying legal fees. In the Texarkana negotiations, the Office reported that attorney's fees paid by it totaled more than $9,500. Travel, clerical, telephone, telegraph, and other miscellaneous expenses paid by the Church came to an additional $ 5,635.95.[66]

As spokesmen for the Church and citizen groups involved had emphasized, then, the more than $ 15,000 expended in the license renewal negotiating process demonstrates that a considerable financial expenditure is necessary in organizing a competent citizen group movement at the local level. Without such funding available, adequate license renewal challenges cannot be mounted.

In October, 1969, approximately two months after the Federal Communications Commission had approved the original KTAL agreement, Earl K. Moore, legal counsel for the Office of Communication, revealed that KTAL had " . . . indicated a willingness . . ." to pay the Church's $ 15,000 expenses " . . . and did not dispute the reasonableness of the amount."[67] However, attorney Moore stated that since " . . . there

appeared to be no precedent for this action, the licensee declined to take it without a ruling by the Commission as to its propriety under all circumstances."[66]

Mr. Moore pointed out that with an increasing number of citizen groups becoming involved in license renewal proceedings, approval by the Commission of the proposed reimbursement would encourage the " . . . resolution of disputes by cooperation at the local level . . . [and] it would also make it possible for community groups to finance continued efforts to improve broadcast service."[69]

Consequently, Mr. Moore formally requested by letter to the Commission that the agency give its official approval to the principle of voluntary reimbursement of citizen groups by licensees.

However, in its response to that request the Commission ruled by a narrow 4-3 margin, that such reimbursement would be contrary to the public interest.[70] And the decision stressed that such denial did not pertain only to the KTAL settlement:

> This . . . [denial] is a principle of general application - namely, that in no petition to deny situation, whatever the nature of the petitioner, will we permit payment of expenses or other financial benefit to the petitioners.[71]

In explaining the decision, the Commission contended that there was no statutory guide upon which such reimbursement might be based. Congress, the decision read, had " . . . specified that there could be reimbursement limited to legitimate prudent expenses, where applicants for new facilities withdrew and thus facilitate the early initiation of new service. [But] . . . there is no explicit statutory guide for any other situation."[72]

Turning to the petition to deny situation, the Commission said that its previous experiences with citizen group petitions had not indicated that the community groups were hindered in their efforts by a lack of reimbursement of their expenses. Furthermore, the decision cited two detriments to the public interest which might result were such reimbursement permitted:

> First, there is the possibility of abuse - of overpayments (e.g., inflated fees) or even opportunists motivated to file insubstantial petitions in order to obtain substantial fees . . . . [And] Second, there is the possibility that settlement of the merits of the dispute might be influenced by the ability to obtain reimbursement of expenses from the licensee. Since the crucial consideration here is the merits of the dispute, we believe that it serves the public interest, as a prophylactic measure, to insure that no such private extraneous consideration as the payment of expenses becomes a factor in the settlement.[73]

It is important to note, however, while considering the Commission majority decision in this matter, there were also three dissenting opinions which were issued by Federal Communications Commission Chairman Burch, and Commissioners Cox and Johnson. Portions of Commissioner Cox's dissent are included below for two reasons. First, the Cox dissent encompasses the significant points raised in the other two minority opinions. And second, the arguments raised by Commissioner Cox were those which were, in large measure, accepted by the court when the decision was subsequently appealed and the Commission majority reversed.

In his opinion Commissioner Cox emphasized several important considerations relating to the request by the Office of Communications for reimbursement. He pointed out that these considerations would adequately safeguard against the possibilities of abuse of the reimbursement process referred to by the majority opinion.

First, Commissioner Cox stated that the Church had provided ample evidence, in the form of official affidavits, that the expenses for which it was seeking reimbursement were legitimate.[74] Second, the Commissioner said it was important to note that the Church had informed the licensee during negotiating sessions prior to the private agreement being reached that it would not permit the matter of reimbursement to stand in the way of a settlement. Consequently, only after the agreement was signed did the licensee indicate its willingness to pay the expenses, and only then did the Church submit its request to the Commission. Thus, the Commissioner stated that there was no evidence that the Church was attempting to coerce the licensee and that the licensee was, in effect, forced to "buy off" the petitioners.[75]

Commissioner Cox concluded his dissent by attempting to justify the reimbursement and by saying that the Commission's action would only serve to discourage further citizen intervention:

> Why should members of the public who have not received adequate service from a local licensee (who has profited from the form of operation objected to) have to bear the unavoidable costs involved in negotiating an agreement binding a licensee to upgrade his performance to an acceptable level?[76]

He addressed himself to what he felt were the real reasons for the majority opinion:

> I'm afraid that the majority's real ground for acting to deny reimbursement of the Church's expense is a distaste for public intervention in the renewal process. The United Church of Christ challenged the Commission's disposition of petitions to deny the renewal of WLBT in Jackson, Mississippi, and in the process elicited two stinging Court of Appeals decisions which were highly critical of this agency. [The opinions] . . . established the general principle that public organizations are entitled to standing in such cases, and

> that they can seek review of the Commission's decisions. Despite . . . [this] I do not think my colleagues of the majority are really willing to encourage broad public participation in our renewal processes. If they were, I do not think they would object to the concept that a station whose renewal has been challenged should be allowed to reimburse its challenger's expenses when it has settled its differences with them and they join urging grant of its renewal.[77]

Commissioner Cox then set forth rebuttals to the two specific objections cited by the majority:

> Two contentions were advanced by the majority in our discussions of this matter. First it was claimed that Congress . . . contemplated reimbursement of expenses only to facilitate the commencement of new service, and that to propose a general policy of reimbursement in renewal cases where new service will not be provided improperly extends the concept beyond the intent of Congress. I think the answer is simply that Congress never considered this situation . . . . To allow reimbursement here simply promotes . . . Congressional purposes. And, in any event, the Commission permits reimbursement in other cases which Congress has not . . . [mentioned]. [T]he Commission for years, has permitted a different kind of reimbursement of expenses in connection with the assignment of construction permits. The applicable standard in these cases is the general one of public interest which pervades the Act and which the majority say must control here. I think that to allow reimbursement of the expenses of public groups who have been interested enough in the public's broadcast service to participate in the renewal process and who have won promises of improved service is clearly in the public interest.
>
> The second argument is based on anticipation of imagined abuses which have not thus far occurred, and which could be guarded against if they ever did, because the Commission can insist that it approve every such agreement. There was a good deal of loose talk of opportunists, barratry, outside professional organizations which might pressure major licensees for financial reasons, and so on. To press such arguments in this case is sheer rot. What we have said here, as already indicated, is a reputable national religious organization which has, perhaps, become the most experienced

> entity in the country is dealing with renewal matters of the kind involved in the Texarkana situation. It was invited to help, and in doing so incurred substantial expenses - and achieved notable results. The licensee did not challenge the claim for expenses as in any way excessive or unreasonable, and apparently the majority do not do so either. So to conjure up horror tales as a basis for denying reimbursement here is ridiculous.
>
> * * * * * *
>
> I am afraid the majority, by their action here will seriously curtail the bonafide participation of the public in our review of broadcast performance at renewal time. I think that is clearly not in the public interest and runs contrary to our past policies - and indeed the provisions of the statute - which seeks to encourage public activity.[78]

After being rebuffed by the Commission, the Office of Communication followed a course it had taken in several previous cases by once again seeking judicial review of an Federal Communications Commission ruling. In its arguments before the Federal Appeals Court of the District of Columbia, the Church was represented by the Citizens Communications Center.[79]

In addition, the Church was aided by the U.S. Department of Justice which, in a highly unusual occurrence, filed a brief asking that the Federal Communications Commission's decision be overturned.[80] The Justice Department, which usually enters cases only on the side of the government, said the ruling served only to frustrate public participation in renewal proceedings which the courts had previously held to be essential. It agreed with Commissioner Cox in saying the Commission action violated its own principle of permitting reimbursement in other situations such as competition for new stations or comparative hearings involving applicants for occupied frequencies. The department's brief read in part:

> . . . the Commission's ruling frustrates the public participation which this court held was vital in Church of Christ I and II. It constitutes a rejection of Commission policy followed for many years in closely analogous situations of approving the reimbursement of legitimate and prudent expenses of a withdrawing party when the settlement agreement between the parties is in the public interest. The Commission by invoking the criterion of necessity has used an erroneous legal standard that misconceives the Commission's obligations to advance the public interest and is at variance with standards elsewhere in the Communications Act. Under the appropriate standard of consistency with the public interest, the Commission's findings and reasonings are inadequate to support its result, especially in light of its failure to consider readily available protective devices . . . to safeguard the public interest against possible abuses of reimbursement agreements.[81]

The Church's appeal to the court was accepted. In a decision issued on March 28, 1972, the court agreed with the view that adequate safeguards do exist to protect against abuse of the reimbursement process and that meaningful citizen participation would be encouraged if at least a portion of the funds expended by citizen groups could be recovered. The court also found adequate precedent for the principle of reimbursement.[82]

In its opinion the court said that the Texarkana case was " . . . a compelling example of the obvious benefits to the public interest . . . "[83] that can result from first filing a challenge, then negotiating, settling the complaint and withdrawing the challenge.

The court continued:

> When such substantial results have been achieved, as in this case, voluntary reimbursement which obviously facilitates and encourages the participation of groups like the church in subsequent proceedings is entirely consonant with the public interest.[84]

Thus, yet another important precedent in the developing role of citizen intervention in broadcast regulation was set. And the method used in achieving that precedent also serves to demonstrate the functioning of procedural safeguards available to protect the public interest in broadcasting.

The purpose of this chapter has been to examine the private agreement and its role in relation to the public interest criterion set forth in the Communications Act. Evidence has been presented to illustrate that despite the objections of some, use of the private agreement can be generally regarded as being in the public interest. In addition, there exist adequate procedural safeguards to insure that the broadcasting system does not become the victim of minority coercion.

The important precedent established allowing the reimbursement of citizen groups by licensees has been examined because it will, in the opinion of many, act as a catalyst to further intensify the public interest activities of citizen groups in broadcasting.

FOOTNOTES

[1]"The Struggle Over Access," Broadcasting, Sept. 20, 1971, p. 32.

[2]47 U.S.C. 307(a) (1964).

[3]"Struggle Over Access," Broadcasting, p. 32.

[4]Richard W. Jencks, "Broadcast Regulation by Private Contract: Some Observations on 'Community Control' of Broadcasting," Address before Broadcasting Industry Symposium, Washington, D.C., Jan. 18, 1971.

[5]KCMC Inc., 19 F.C.C. 2d 109 (1969).

[6]"Jencks: Leave Regulation to the FCC," Broadcasting, Jan. 25, 1971, p. 32.

[7]Jencks, "Broadcast Regulation by Private Contract," p. 5.

[8]Ibid., p. 4-5

[9]Ibid.

[10]Ibid., p. 8.

[11]Ibid., p. 18.

[12]See Nicholas Johnson, "A New Fidelity to the Regulatory Ideal," The Georgetown Law Journal, Vol. 59, p. 867 (1970).

[13]Ibid.

[14]Jencks, "Broadcast Regulation by Private Contract," p. 16.

[15]Ibid., p. 16-17.

[16]Ibid., p. 17.

[17]Ibid.

[18]Ibid.

[19]KCMC Inc., 20RR 2d 275 (1971).

[20]Office of Comm. United Church of Christ v. FCC 24RR 2d 2001 (1972).

[21]"Earl Moore Defends Citizen-Licensee Deals," Broadcasting, Feb. 22, 1971, p. 31.

[22]Ibid.

[23]KCMC Inc., 19 F.C.C. 2d 121 (1969).

[24]Ibid.

[25]Ibid., p. 121-122.

[26]Ibid.

[27]"Moore Defends Citizen-Licensee Deals," Broadcasting, p. 31.

[28]Letter from Ralph M. Jennings, Communication Analyst, Office of Communication, United Church of Christ, Jan. 18, 1972.

[29]"The Pool of Experts on Access," Broadcasting, Sept. 20, 1971, p. 57.

[30]"The Struggle Over Broadcast Access (II)," Broadcasting, Sept. 27, 1971, p. 41.

[31]Office of Communication, United Church of Christ v. FCC, 7RR 2d 2001 (1966).

[32]Ibid.

[33]Jencks, "Broadcast Regulation by Private Contract," p. 16.

[34]Letter from Ralph M. Jennings, Jan. 18, 1972.

[35]KCMC Inc., 19 F.C.C. 2d 120 (1969).

[36]Ibid.

[37]Letter from Ralph M. Jennings, Jan. 18, 1972.

[38]The Evening Star Broadcasting Co., 27 F.C.C. 2d 317 (1971).

[39]"WMAL-TV Survives Renewal Threat," Broadcasting, Feb. 8, 1971, p. 40.

[40]Evening Star Broadcasting Co., 27 F.C.C. 2d 317 (1971).

[41]Ibid., p. 334.

[42]"FCC Rejects Black Challenge to Local TV," New York Times, Feb. 8, 1971, p. 66.

[43]Evening Star Broadcasting Co., 27 F.C.C. 2d 332 (1971).

[44]Ibid., p. 333.

[45]Ibid., p. 334.

[46]"WMAL-TV Survives Threat," Broadcasting, p. 40.

[47]"Memphis TV Station Wins Renewal Fight," Broadcasting, Oct. 4, 1971, p. 27.

[48]WKBN Broadcasting Corp., 22RR 2d 609 (1971).

[49]Pueblo Stereo Broadcasting Corp., 23RR 2d 389 (1971).

[50]"Minority Group Loses in Denver," Broadcasting, Aug. 9, 1971.

[51]WGN of Colorado, Inc., 31 F.C.C. 2d 416 (1971).

[52]"Omaha Challenges Denied, But FCC Leaves Door Ajar," Broadcasting, April 19, 1971, p. 39.

[53]"FCC Says It Won't Pressure for Payments," Broadcasting, April 26, 1971.

[54]Black Identity Educ. Assn., 21RR 2d 746 (1971).

[55]Ibid., p. 747.

[56]Ibid., p. 746.

[57]Ibid.

[58]Bob Jones Univ., 23RR 2d 410 (1971).

[59]Ibid.

[60]Ibid., p. 411.

[61]Ibid.

[62]"Too Much Concession to A Citizen Group?" Broadcasting, Dec. 20, 1971, p. 31.

[63]United Church of Christ v. FCC 24RR 2d 2001 (1972).

[64]Citizens Communications Center, Progress Report, (May, 1971), p. ii.

[65]KCMC Inc., 19 F.C.C. 2d 109 (1969).

[66]"Free Ticket Found to Finance Complaints?" Broadcasting, Nov. 3, 1969, p. 40-41.

[67]Ibid.

[68]Ibid.

[69]Ibid.

[70]KCMC Inc., 20RR 2d 267 (1970).

[71]Ibid., p. 269.

[72]Ibid., p. 267-268.

[73]Ibid., p. 268.

[74]Dissenting Opinion of Commissioner Kenneth Cox, KCMC Inc., 20RR 2d 272 (1970).

[75]Ibid., p. 273.

[76]Ibid., p. 276.

[77]Ibid., p. 273-274.

[78]Ibid., p. 275.

[79]"Criteria for Reimbursing the Piper," Broadcasting, Nov. 8, 1971, p. 40.

[80]"FCC, Justice Disagree on Payoff," Broadcasting, April 12, 1971, p. 9.

[81]Brief of the U.S. Department of Justice, p. 8, United Church of Christ v. FCC, as quoted in Radio Station WSNT, Inc., 23RR 2d 586 (1971).

[82]United Church of Christ v. FCC 24RR 2d 2001 (1972).

[83]"Court Backs TV Paying of Fees Incurred in Legal Challenges," New York Times, Mar. 28, 1972, p. 75.

[84]Ibid.

CHAPTER VI

SUMMARY AND CONCLUSIONS

The intent of this thesis has been to examine the emergence of a new participant in American broadcasting, the citizen group. An attempt has been made to characterize the methods that were developed, refined and implemented by community groups as they sought a measure of control over the quality of broadcast service offered at the local level.

The obligation of a broadcast licensee to operate so as to serve the " . . . public interest, convenience and necessity,"[1] has been discussed. And a brief description of attempts by the Congress, the courts and the Federal Communications Commission to give specific definition to that concept has been offered.

However, studies have indicated that, in many instances, American broadcasters have not been fully committed to fulfilling their public service requirements. In a sense, it would seem that the compromise inherent in the American broadcasting system - that of balancing the concept of free enterprise with a broadcaster's responsibility as a fiduciary of the public trust - has been weighted in favor of the private entrepreneurs.

In this regard, the difficulties faced by the Federal Communications Commission in restoring a more equitable balance to that compromise have been explored. The Commission, primarily because of a lack of

resources, simply has been unable to police on an individual basis the more than 7,400 broadcast licensees operating in this country. The consequences of such a limitation have resulted in a gap, in some cases, between the quality of service expected of a broadcaster and the type of service actually received from him.

The emergence of the citizen group, then, might be described as an attempt to do on a local basis, what the Federal Communications Commission has been unable to do on a national level toward restoring a more equitable balance to the compromise between private enterprise and public service that is intended to characterize American broadcasting.

As has been shown, however, private individuals were, at first denied the concept of "standing" and thus the right to participate in the official regulatory proceedings of the Federal Communications Commission. Only after a lengthy court battle did the private citizen's right to challenge the service provided by a licensee gain acceptance.[2]

But once these rights were secured, the role of the citizen group as a participant in the broadcast regulatory process quickly began to develop. Licensees, made aware of the potential power of a well organized citizen group, suddenly became willing to listen to citizen complaints. With the acceptance of the negotiation process, and eventually the first formal private agreement with station KTAL, the citizen group movement progressed still further.[3] As the data presented earlier indicates, the two-and-one-half year period immediately following the KTAL agreement produced a citizen group movement on a nationwide scale.

In addition, several advisory organizations were subsequently formed to represent and assist community groups in their negotiations with broadcasters.

Despite the legitimate attempts at media reform by private individuals, however, the citizen group movement has not been entirely free of instances where its influence has been used in a questionable manner. And broadcasters, who have at times described their industry as being in a state of seige by citizens, have been quite vocal in their objections to what they see as regulation by " . . . private contract."[4]

Consequently, it has been necessary to demonstrate that the efforts of citizen groups are in the interests of the entire public, as well as particular minorities. This has been done by examining the provisions of the private agreements themselves, and by examining the safeguards available to insure that the broadcasting industry does not become a victim of minority coercion. In addition, the Federal Communications Commission, always cautious in its dealings with citizen intervention, has been quick to establish methods of review and set important precedents in its efforts to guard against abuse of the negotiation-private agreement procedure.

Another important development that lends support to the legitimacy of the citizen group movement has been a 1972 court ruling which reversed an Federal Communications Commission decision and endorsed the concept of voluntary reimbursement of citizen group expenses incurred in challenging a licensee.[5] The decision that licensees may pay such expenses will act as a new stimulant in the citizen group movement. This will occur either through more extensive citizen group activity, or through more

concerted efforts on the part of broadcasters to provide higher quality service in an attempt to avoid costly and hazardous license challenges.

In a study as limited in scope as this one, it is difficult to assess the overall impact of the citizen group movement on the American system of broadcasting. It can certainly be stated that as the result of community group action, most broadcasters are now more cognizant of their responsibilities to serve the public interest. It must also be stated, however, that although broadcasters may be aware of these responsibilities, the debate concerning attempts to define and fulfill them will continue.

Three examples of attempts by broadcasters and the Federal Communications Commission to respond to citizen group activity are included here to provide some indication of the kinds of changes that citizen activism has helped bring about in broadcasting.

The reaction of the National Broadcasting Company has been an attempt to obtain a measure of security from citizen intervention by requesting that the Federal Communications Commission adopt a quantitative standard for renewing broadcast licensees.[6] Under the proposal, any licensee who devotes a minimum of ten to twelve per cent of his program schedule to non-entertainment materials would be presumed to have attained a performance level satisfactory enough to insure renewal by the Federal Communications Commission.

Certainly, the merits of such a proposal are open to debate. But the fact that a national broadcast network would offer such a proposal serves to indicate that broadcasters do not approach the license renewal process with the same confident manner as they did only a few

years ago. Citizens groups have been instrumental in bringing about this change in attitude.

At the Federal Communications Commission there have been some significant developments which may also be attributed in part to the impact of community groups. In 1971 the Commission issued a primer to provide guidelines for broadcasters attempting to ascertain community needs and interests.[7] The primer sets forth specific criteria which a broadcaster must meet in attempting to determine the problems he might help alleviate in his community. The effect of this primer has been to produce significantly more communication between broadcast licensees and the public.[8]

In addition to the primer, the Federal Communications Commission has begun consideration of the establishment of an office of public counsel to aid members of the public in exercising their rights with respect to broadcast regulation.[9] Among the proposed services of such an office would be advising complainants on procedures to follow in filing petitions to deny license renewals. The most dramatic of the services offered would include the establishment of a separate legal staff within the Federal Communications Commission to serve as a public interest law firm representing members of the public in any manner of proceeding before the Commission.[10] Although these proposals are still in the developmental stage, the fact that they are under consideration serves to demonstrate the the Federal Communications Commission is attempting to orient itself more to the needs of the public, as well as continue to serve the needs of the broadcasting establishment.

The above examples may be regarded as general indicators of the impact of the citizen group and the use of the private agreement on American broadcasting. However, further research is needed to provide more precise information as to the effect of community groups at the local level.

The license period of broadcasters who have operated under the first private agreements is now nearing expiration. Perhaps a study might be conducted in those communities where broadcasters have operated under such agreements in an attempt to provide detailed information about the effect of these first three-year experiments. Important areas of investigation would be the broadcasters' and citizen groups' assessments as to the advantages or limitations of the use of the private agreement as a mutually satisfactory tool.

More importantly, the reactions, if any, of the entire community affected by the changed broadcast service might give a good indication as to whether citizen intervention has been successful in realizing its goal of a media that is more responsive to community needs and interests. Such a study might be based on extensive interviews with broadcasters, citizen groups and community representatives.

FOOTNOTES

[1]47 U.S.C. 309(a) (1964).

[2]Office of Communication of United Church of Christ v. FCC 7RR2d 2001 (1966).

[3]KCMC Inc., 19 F.C.C. 2d 109 (1969).

[4]Richard W. Jencks, "Broadcast Regulation by Private Contract: Some Observations on 'Community Control' of Broadcasting," Address to Broadcasting Industry Symposium, Washington, D.C., January 18, 1971.

[5]Office of Communication of United Church of Christ v. FCC 24RR2 2001 (1972).

[6]"N.B.C. Asks F.C.C. to Establish Statistical Licensing Standard," New York Times, November 16, 1971, p. 65.

[7]Primer on Ascertainment of Community Problems, 27 F.C.C. 2d 650 (1971).

[8]"Broadcast Aides to See Community Chiefs on F.C.C. Renewals," New York Times, October 1, 1971, p. 82.

[9]"Radical Plans Ahead at FCC," Broadcasting, May 1, 1970, p. 32.

[10]"More Aid to Challengers?" Broadcasting, July 5, 1971, p. 47.

Appendix A: Text of Station KTAL's Private Agreement

Agreement

KCMC, Inc., licensee of KTAL-TV, and all parties to the petition to deny and to the reply filed with respect to KCMC, Inc.'s application for renewal of its television broadcast license, being hereinafter collectively referred to as "Petitioners," agree as follows:

1. KCMC, Inc., will broadcast on prime time the statement of policy attached hereto. This agreement and this statement will also be filed with the Federal Communications Commission as an amendment to the pending renewal application. Any material variance from said statement shall be deemed to be a failure to operate substantially as set forth in the license.

2. Simultaneously with the filing of said statement, petitioners will join and hereby join in requesting the Federal Communications Commission to give no further consideration to the pleasings filed by petitioners, or any of them, with respect to KTAL-TV. Petitioners also join in requesting the Federal Communications Commission to renew KTAL-TV's Television broadcast license for a full term.

3. This agreement and the attached statement contain the complete agreement of the parties, and there are no other promises or undertakings, express or implied.

Signed this 8th day of June 1969.

KCMC, Inc., W. E. Hussman, President; Texarkana Organization, Robert D. Smith, President; Citizens Committee to Improve Local Television Service, David E. Stephens, Chairman; Carver

Terrace Community Club, Eldridge Robertson, Chairman; Negro Community Leaders Committee, G. W. Thompson, M.D.; National Association For the Advancement of Colored People. Mrs. Jennie Dansby, Secretary; Texarkana Improvement Club, H. F. Langford, Jr., President; Marshall Alumni Chapter Kappa Alpha Psi Fraternity, Denzer Burke; Gamma Kappa Zeta Chapter, Zeta Phi Beta Sorority, Helen McNeal, President; Phi Beta Sigma Fraternity, M.D. Dodd, President; New Hope Baptist Church, Kiblah, Ark., N.E. Jones, Pastor; Lonoke Bapits Church, C.K. Yarber Pastor; Model Cities Planning Area P7, Miss Helen S. King; Earle K. Moore, Attorney for Petitioners; James E. Greeley, attorney for KCMC, Inc.

Statement of Policy

KTAL-TV, having in mind its duty to serve equally all segments of the public, makes the following statement of policy:

1. KTAL will continue to observe all laws and Federal policies requiring equal employment practices and will take affirmative action to recruit and train a staff which is broadly representative of all groups in the community. As part of this policy, KTAL will employ a minimum of two fulltime Negro reporters, one for Texarkana and one for Shreveport. These reporters will appear regularly on camera. In addition, KTAL will designate one person on its program staff to be responsible for developing local public affairs programs of the type described later in this statement and for obtaining syndicated or other programs to serve similar needs.

2. KTAL will continue to maintain and will publicize a toll-free telephone line from Texarkana to its studios in Shreveport. A person will be available in Shreveport to receive requests for news

coverage and inquiries about public service announcements. KTAL will give adequate coverage to events in the State capitols of Texas and Arkansas, as well as those of Louisiana and Oklahoma.

3. KTAL recognizes its continuing obligation to maintain appropriate facilities in Texarkana, its city of assignment. To this end, it will assign to its main studios in Texarkana a color television camera.

4. KTAL recognizes its obligations to present regular programs for the discussion of controversial issues, including, of course, both black and white participants. The station will not avoid issues that may be controversial or divisive, but will encourage the airing of all sides of these issues.

5. Poverty is a primary problem in KTAL's service area. KTAL is obligated to try to help solve this problem by publicizing the rights of poor persons to obtain services and the methods by which they may do so. KTAL will also inform public opinion about the problem of poverty and the steps that are being taken to alleviate it. An aggregate of at least one-half hour of programming will be devoted to this subject each month.

6. KTAL religious programming should cover the entire range of religious thought. As part of its continuing effort to meet this obligation, KTAL will carry the religious programs presented by NBC representing the three primary American faiths. A discussion program will also be presnted, to explore current religious issues, at least monthly. KTAL will regularly present ministers of all races on local religious programs. These ministers will be regularly rotated, in an

effort to represent fairly all religious groups.

7. Network programs of particular interest to any substantial group in the service area will not be preempted without appropriate advance consultation with representatives of that group.

8. KTAL is obligated to discuss programming regularly with all segments of the public. In particular, a station employee with authority to act will meet once a month with a committee designated by the parties to the petition to deny KTAL's TV application for license renewal. Similar efforts will be made to consult with groups representing other segments of the public.

9. KTAL will regularly announce on the air that the station will consult with all substantial groups in the community regarding community taste and needs and will accept suggestions on how best to render this service. This announcement will be broadcast once a week, on a weekday, between 7 and 11 p.m.

10. KTAL reaffirms its existing policy to make no unessential reference to the race of a person. In cases where such references are made, the same practice shall be and will be followed for blacks as for whites. KTAL will continue to use courtesy titles for all women, without regard for race.

11. KTAL will endeavor to develop and present at least monthly, in prime time, a regular local magazine-type program, including not only discussion but also local talent, and seeking participation from the entire service area.

12. KTAL will solicit public service announcements from local groups and organizations. Sound on film will be used more extensively

in covering local news. In covering demonstrations, picketing, and similar events, KTAL-TV will seek to present the diverse views which gave rise to the event.

13. KTAL-TV's undertakings are subject to all valid laws, rules and regulations of the Federal Communications Commission and to KTAL's primary obligation as a broadcast licensee to use its own good faith and judgment to serve all members of the viewing public. It is recognized that needs and circumstances change, that events may compel departure from these undertakings. However. KTAL-TV will not depart from these undertakings without advance consultation with the affected groups in the service area and advance notice ot the Federal Communications Commission stating the reasons for the departure. In such instances KTAL will seek to adhere to the objectives of this statement by alternative action.

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